

AGENDA

December 07, 2020

**CONSISTENT WITH TERMS OF GOVERNOR HOLCOMB'S
EXECUTIVE ORDER FACEMASK ARE REQUIRED!**

Mishawaka School Board Member
Amanda Roberts/Update to Council
6:00PM

Meetings of Standing Committees
Council Conference Room
6:45PM

REGULAR MEETING OF THE MISHAWAKA COMMON COUNCIL
COUNCIL CHAMBERS/CITY HALL
7:00PM

WebEx Telephone Number: 1-408-418-9388
Meeting Number (access code) 179 506 7540
Meeting password: dH33tPmPfp3

Livestream #1: <https://www.facebook.com/cityofmishawaka/>
Livestream #2: @MichianaAccessTV on Facebook
Livestream #3: Michiana Access TV
(Comcast and AT&T U-Verse Channel 99)

To connect on-line join using Microsoft Lync or Microsoft Skype for Business

[Dial: 1795067540.mishawaka@lync.webex.com](Dial:1795067540.mishawaka@lync.webex.com)

Members of the public will be asked to place their microphone on mute during the Meeting, with the exception of any public hearing. At the appropriate point in the public hearing, the Council President will invite the public to unmute their microphone for purposes of submitting such comments, one person at a time. All persons wishing to make public comments will be asked to first state their name and address for the record. After completing his/her public comments, members of the public will once again be asked to place their microphone on mute. Thank you for your cooperation.

1. Call to Order
2. Pledge of Allegiance
3. Roll Call

4. Approval of the Minutes of the Regular Meeting of November 16, 2020

5. Petitions, Communications, Remonstrance and Memorials

APPEAL NO. 2020-52 Use Variance to maintain 3 units in R-1 Single
Family Residential District - 823 E. Third St.

6. Report of Special Committee

7. Ordinances on First Reading

P.O. NO. 2020-45 Transfer Funds - General Fund - \$50,000.00

P.O. NO. 2020-46 Amending the 2021 Civil City Salary Ordinance

8. Resolutions

R2020-25 Renewal of Waste Removal Contract

9. Ordinances on Second Reading

P.O. NO. 2020-43 Rezone from C-1 District to R-1 District for
Residential Use - 2316 Lincoln Way West
(Assigned to Land Use Planning Committee)

P.O. NO. 2020-44 Rezone from C-7 & R-1 District to C-10 District to
allow a Convenience Store with gas pumps - 119 W.
McKinley Ave & 2219, 2215, 2205 & 2201 N. Main St.
(Assigned to Land Use Planning Committee)

10. Privilege of the Floor - Non-Agenda Items

11. Unfinished Business

P.O. NO. 2020-39 Mishawaka Waterworks Bond Ordinance
(Assigned to Budget and Finance Committee)
Amendment Requested

P.O. NO. 2020-40 Adopting Revised Rates and Charges for Water
(Assigned to Budget and Finance Committee)

P.O. NO. 2020-41 Mishawaka Electric Bond Ordinance
(Assigned to Budget and Finance Committee)

P.O. NO. 2020-42 Adopting Revised Rates and Charges for Electric
(Assigned to Budget and Finance Committee)

12. New Business

13. Adjournment - This meeting will be aired Wednesday at 9:00AM on the Public Access Channel

At this time, I know of no other business to come before the Council.
Deborah S. Block, IAMC, MMC, City Clerk

The City of Mishawaka acknowledges its responsibility to comply with the Americans with Disabilities Act of 1990. In order to assist individuals with disabilities who require special services (i.e. sign interpretative services, alternative audio/visual devices, and amanuenses) for participation in or access to City sponsored public programs, services and/or meetings, the City requests that individuals make requests for these services forty-eight (48) hours ahead of the scheduled program, service and/or meeting. To make arrangements contact Susan Kile, ADA Coordinator, at (574) 258-1615.

Note: The Mishawaka Common Council has instituted changes in the way in which its meetings will be conducted during the current public health emergency. These changes are consistent with the terms of multiple Executive Orders issued by Governor Holcomb, as well as related legal guidance. It is anticipated that the Council's normal meeting procedures will be reinstituted at the conclusion of the public health emergency. In the meantime, physical attendance at Council meetings will continue to be restricted in accordance with relevant guidance related to limitations on public gatherings and social distancing. During the public health emergency, Council members, as well as members of the public and media, will continue to be afforded the opportunity to remotely access Council meetings. Recordings of Council meetings (if applicable) and the minutes of the meetings will also be made available to the public and the media as soon as is possible.

REGULAR MEETING OF THE MISHAWAKA COMMON COUNCIL

November 16, 2020

Be it remembered that the Common Council of the City of Mishawaka, Indiana met in the Council Chambers of the Mishawaka City Hall and via telephone on Monday, November 16, 2020 at 7:00PM. The meeting was called to order by President Gregg Hixenbaugh. All were asked to stand for the Pledge of Allegiance, followed by a moment of silence to remember the lives lost due to COVID-19.



Roll Call.

Present: Mrs. DeMaegd, Mr. Banicki, Mr. Hazen, Mr. Mammolenti, Mr. Emmons, Mr. Bellovich, Mr. Compton, Mrs. Voelker, Mr. Hixenbaugh.

Others Present: Mike Trippel, Council Attorney and Clerk Block

Minutes for the Regular meeting of November 4, 2020 were approved as received from the Clerk's Office.

Clerk Block read letters from the Board of Zoning Appeals and the City Plan Commission regarding their recommendations from their November 10, 2020 meetings.

Clerk Block read the following proposed ordinances by title and assigned committee.

PROPOSED ORDINANCE NO. 2020-43

AN ORDINANCE AMENDING CHAPTER 137 OF THE MUNICIPAL CODE OF THE CITY OF MISHAWAKA, INDIANA, AS FROM TIME TO TIME AMENDED, COMMONLY KNOWN AS "THE ZONING ORDINANCE OF 1966" OF THE CITY OF MISHAWAKA, INDIANA.

**Rezone from C-1 District to R-1 District for Residential Use – 2316 Lincoln Way West
(Assigned to Land Use Planning Committee)**

PROPOSED ORDINANCE NO. 2020-44

AN ORDINANCE AMENDING CHAPTER 137 OF THE MUNICIPAL CODE OF THE CITY OF MISHAWAKA, INDIANA, AS FROM TIME TO TIME AMENDED, COMMONLY KNOWN AS "THE ZONING ORDINANCE OF 1966" OF THE CITY OF MISHAWAKA, INDIANA.

**Rezone from C-7 & R-1 District to C-10 District to allow a Convenience Store with gas pumps - 119 W. McKinley Ave & 2219, 2215, 2205 & 2201 N. Main St.
(Assigned to Land Use Planning Committee)**

Clerk Block read the following resolutions by title and opened the public hearing.

RESOLUTION R2020-23

**A RESOLUTION OF THE COMMON COUNCIL OF THE CITY OF MISHAWAKA,
INDIANA APPROVING A PETITION OF THE MISHAWAKA BOARD OF ZONING
APPEALS FOR THE PROPERTY LOCATED AT: 509 E LAWRENCE STREET
MISHAWAKA, INDIANA**

Use Variance to maintain a Duplex in R-1 Single Family Residential – 509 E. Lawrence St.

Darlene Ballard, 509 E. Lawrence Street, was present via WebEx.

Jaime Bradshaw, Darlene Ballard's sister and business manager, spoke in favor of **RESOLUTION NO. 2020-23**. Mrs. Bradshaw stated they were requesting the variance, because the property sold is contingent on the variance going through with the new property owner inquiring about it and the variance is needed for sale.

Mr. Compton asked if the residence had been operating as a duplex currently. Mrs. Bradshaw stated it is and has been operating as a duplex going back to 1966.

Mrs. Voelker asked if there was any way they could go back into the information the city has to start rezoning these things properly. Mr. Hixenbaugh stated that would be a good question for Mr. Prince. Ken Prince, City Planner, stated the issue they have was Mishawaka had been founded on a lot of industry and blue collar housing developed at the time. Mr. Prince stated in this case, they recommended a use variance because it would be a hardship to go back and modify the property that had been in use as a duplex for over 50 years back to a single family residence. Mr. Prince stated they would like more of these dwellings converted back to single family than not and he believed he premise of what they were doing was that they did not want to go and create conforming situations where they think there is a chance that they could be converted over time. Mr. Prince concluded stating the action was merely doing the minimal amount necessary to allow the transaction to move forward. Mrs. Voelker thanked Mr. Prince and stated ideally in the neighborhood, they do want them to go back to single family homes and if they are zoned as R-2 the likelihood of that happening is less. Mrs. Voelker also stated they are leaving money on the table, because they aren't being taxed. Mr. Prince stated they should be taxed on the underlying use regardless and not taxed on the zoning. Mr. Prince stated the taxing question would be a question for the assessor and Mr. Prince stated he would speak with the assessor and find that out.

Mr. Emmons asked if Mr. Prince knew if the petitioner will live in the units or rent them out. Mr. Prince stated they had not had any discussion with the buyer, but only the applicant. Mr. Prince stated he did not know if the petitioner would live there. Mr. Emmons asked if they should put a time limit on this use variance. Mr. Prince stated he believed if they put a time limit on it, it would have to exceed the lending limit on the property. Mr. Prince stated he did not recommend putting a time limit on a use variance with a lending limit such as this.

Mrs. DeMaged stated after looking at the listing of the property, it shows the property as a duplex and it is being sold as a duplex.

Mr. Hixenbaugh stated he thought the individualized analysis of these types of requests and control of ability to build conditions into these uses is on balance in their best interest and agreed with all of Mr. Prince's points.

Mr. Emmons asked the petitioner if in the sale of this unit, if the person buying it will live in the units or to rent out the units. Mrs. Bradshaw stated they did not know the answer to that. Mr. Emmons stated he is concerned with what the unit will be used for.

Mr. Mammolenti asked if they know if the buyer is local to Mishawaka. Mrs. Bradshaw stated she believed the buyer is a local of Mishawaka, but Mrs. Ballard stated she was not sure of that. Mrs. Bradshaw stated they will check with the realtor to be sure.

Mr. Compton stated he understood the thought of Mr. Emmons and he thought in the perfect world he would agree with him, but this is a duplex that had been operating for 50 years. Mr. Compton stated he did not think it was fair to the current owner who bought it and now can't sell it if they don't prove the zoning without making the financial investment into converting it back. Mr. Compton stated he did not believe in these neighborhoods with these types of homes that would be realistic. Mr. Compton stated he would like to see more single family homes and under certain situations they should deny rezoning, especially if someone wanted to convert an existing property. Mr. Compton stated with something that has been there for 50 years, he did not see how the council could deny the request.

Mr. Emmons stated his concern was that people buy these, continue to live out of town, just rent them for the money and do not maintain them which would cause problems for the council. Mr. Emmons stated if it were an individual buying it and living in half of it and renting out the other half of it, he would have no issue. Mr. Emmons stated they are running into this exact problem in Mishawaka with other buildings, especially in his district, of people buying homes, turning them into rentals and not maintaining them. Mr. Emmons stated he thought the petitioner should know the answer of who is buying the duplex and all of their information. Mr. Emmons stated he is not in favor of this use variance.

Mr. Hixenbaugh stated he appreciated having heard that discussion and also congratulated Mrs. DeMaged for doing her research of the tax records. Mr. Hixenbaugh stated he will be voting in favor, because if in fact they are presented with evidence of the property having problems that is a relevant factor with regard to the decision, but this evening they had heard of no types of issues. Mr. Hixenbaugh concluded stating until and unless they are presented with that evidence, he will assume it will be a net positive for the neighborhood and he was confident with the Planning Department and Code Enforcement Department will keep a close watch on this property along with all the others posing an issue in the neighborhood. Mr. Hixenbaugh concluded stating he would be voting in favor of the use variance.

Question was called for at 7:23PM for **RESOLUTION R2020-23**  **Vote: Motion passed (summary: Yes = 7, No = 2, Abstain = 0).**

Yes: Mrs. DeMaegd, Mr. Banicki, Mr. Mammolenti, Mr. Bellovich, Mr. Compton, Mrs. Voelker, Mr. Hixenbaugh.

No: Mr. Hazen, Mr. Emmons.

RESOLUTION R2020-24

A RESOLUTION OF THE COMMON COUNCIL OF THE CITY OF MISHAWAKA, INDIANA APPROVING A PETITION OF THE MISHAWAKA BOARD OF ZONING APPEALS FOR THE PROPERTY LOCATED AT: 1032 E TWELFTH STREET Conditional Use for Sand Mining – 1032 E Twelfth St.

Matthew Cane, 5777 Cleveland Road, represented Blue Print which was the company wishing to lease the property in question from John Cocquyt and he is speaking on behalf of Mr. Cocquyt. Mr. Cane stated the property is a parcel that is zoned I-2 heavy industrial and Mr. Cocquyt had owned it for approximately 20 years. Mr. Cane stated it has not been used much but he would store sand, gravel, and occasionally heavy equipment. Mr. Cane stated historically, he believed going back prior to 1966 when the zoning law came about, it had been used for mining sand. Mr. Cane stated this is not mining on a grand scale where there is processing equipment, but it is a back hoe digging sand out of a hole and putting it into a truck. Mr. Cane stated a manmade pond exists on the property and they wish to obtain additional sand from the site for primarily local construction projects and the sand would be sold to HRP Construction. Mr. Cane stated the use of the site falls under I-2 Industrial with the exception of removing the sand and they wish to dig initial sand out of the wet pit and also would like for HRP Construction to be able to use the site as a construction yard. Mr. Cane stated they would store equipment and perhaps piles of aggregates and he believed those fell under the current I-2 zoning. Mr. Cane stated they had submitted their request to the city and Engineering along with Planning came back with some reasonable requests and they are prepared to honor those requests.

Mr. Bellovich asked if the pond will be fenced or barricaded off. Mr. Cane stated the property already has a six foot chain linked fence with barbed wire around most of it with a gap in the fence where it adjoins City of Mishawaka Organic Resources. Mr. Cane stated the mining of sand would have to be 50 feet back from the property line and there are mature trees around the site along with the fencing.

Mr. Emmons asked with the digging of the sand, if they are coming out towards the road. Mr. Cane stated he did not have a map but he believed the pond now is 600 feet away from Twelfth Street so they would not be coming close to the street. Mr. Cane stated the pond would be going deeper and a bit to the south and more to the west. Mr. Emmons asked how long they will continue to harvest sand. Mr. Cane stated they have asked to lease the property for a year and ideally they would like to harvest the sand before spring and have it in place. Mr. Emmons asked after harvesting the sand, what their next idea will be with it. Mr. Cane stated the water is only 3 or 4 feet below the surrounding area, making it a shallow water table. Mr. Cane stated it will be a larger pond when they are done and HRP has cleaned up the area. Mr. Cane stated the property will be in better shape than it was before when they are finished.

Mr. Compton asked if there would be any additional buildings built out there. Mr. Cane stated there will not be. Mr. Compton also asked if this would be just HRP using the sand in the Race Way project. Mr. Cane stated that is correct. Mr. Compton asked how much sand they think they

will take out of there. Mr. Cane stated that site will call for an order of 25,000 cubic yards plus or minus 20 percent.

Mrs. Voelker stated Kroger is to the West of the site and the Assisted Living building and then to the south would be the Organic Resource facility. Mr. Cane stated that was all correct. Mrs. Voelker asked if there was a baseball diamond on one side. Mr. Cane stated it is and that was city property, more specifically Baker Park. Mrs. Voelker asked if there is solid fence between Baker Park and their site. Mr. Cane stated there was fencing.

Mr. Hixenbaugh asked with regard to Kroger, what type of noise they would expect to experience while the mining is in operation. Mr. Cane stated the City Facility is in the area and they use dump trucks and a front end loader. Mr. Cane stated the noise of this site would be very similar to that, because this will operate as a construction yard. Mr. Cane there would be conventional construction equipment such as an excavator, a bulldozer and other sorts of things. Mr. Cane stated it would not be unusually loud and the equipment would only be operating during business hours from 7AM to 8PM. Mr. Cane stated they usually would run from the start of 4:30 to 6. Mr. Cane stated he did not think it would offer as a sound nuisance. Mr. Hixenbaugh asked if there should be any worry from a parent watching their child at Baker Park and if they should worry about dust clouds wafting over the fence from the mining operation and interfering with the athletic events. Mr. Cane stated one of the benefits of the site comes from below the water table and do not create dust. Mr. Cane stated the majority of the work would be before spring occurs and the parks would not be in use. Mr. Cane stated it would not generate a lot of dust. Mr. Hixenbaugh asked if there are concerns, who should they address those concerns with. Mr. Cane stated they would address those concerns with him.

Question was called for at 7:41PM for **RESOLUTION R2020-24**  **Vote: Motion carried by unanimous roll call vote (summary: Yes = 9).**

Yes: Mrs. DeMaegd, Mr. Banicki, Mr. Hazen, Mr. Mammolenti, Mr. Emmons, Mr. Bellovich, Mr. Compton, Mrs. Voelker, Mr. Hixenbaugh.

Mr. Mammolenti made a motion that the council postpones the public hearing on proposed ordinances number 2020-39, 2020-40, 2020-41 and 2020-42 until their December 7th meeting, with a second from Mr. Compton.  **Vote: Motion carried by unanimous roll call vote (summary: Yes = 9).**

Yes: Mrs. DeMaegd, Mr. Banicki, Mr. Hazen, Mr. Mammolenti, Mr. Emmons, Mr. Bellovich, Mr. Compton, Mrs. Voelker, Mr. Hixenbaugh.

NEW BUSINESS

Mr. Mammolenti announced the last neighborhood watch meeting of 2020 will be held on November 18th at 7PM via zoom and stated he would circulate the link to the meeting as soon as he received it. Mr. Mammolenti stated they would have Mayor Wood as a guest speaker to provide updates and Lieutenant Reppert will also be speaking.

Mr. Compton stated they had a meeting with the Fire Department last week with their negotiating committee and they would honor the agreement with no additional changes at this

time. Mr. Compton explained on the WebEx app how to completely mute the microphone for future reference.

Mr. Hixenbaugh announced the council will hold a public meeting on the four ordinances on Monday, November 30th at 6PM in the Council Chambers and will make remote participation available. Mr. Hixenbaugh stated the ordinances in question deal with proposed rate hikes with regard to their Water utility and Electric utility and will have relevance with regard to the plans for the new City Hall building.

Mrs. DeMaged asked the council if there is any way they would get an audit by the city referring to how many properties that are multi-family and are zoned in R-1. Mr. Hixenbaugh suggested they have that discussion with Mr. Prince at the conclusion of the meeting to see if that can be integrated into their normal process.

ADJOURNMENT 7:49PM

Deborah S. Block /s/
Deborah S. Block, IAMC, MMC, City Clerk

Gregg A. Hixenbaugh /s/
Gregg A. Hixenbaugh, President

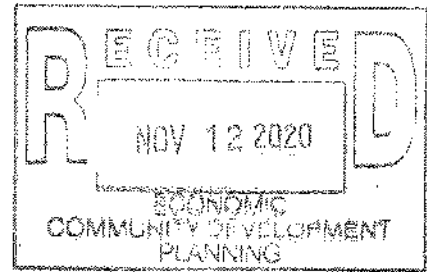
RECEIVED
DEBORAH S. BLOCK, MMC

NOV 24 2020

CITY CLERK
MISHAWAKA, IN

Date: November 10, 2020

To: Board of Zoning Appeals
City of Mishawaka, Indiana



The undersigned appellant respectfully shows the Board:

1. I, Steven Van Damme, am the owner of the following described real estate located within the City of Mishawaka, Penn Township, St. Joseph County, State of Indiana, to wit:

1 Rd W Side Lot 7 & 2 Rds E Side Lot 8 Parks Sub
823 E Third Street

2. The above-described real estate presently has a zoning classification of R1 District under the Zoning Ordinance of the City of Mishawaka.
3. Appellant presently occupies the above-described property as a multi-family residence with three single-bedroom units.
4. Appellant desires to be granted a use variance that will officially allow the above-described property to continue being used as a multi-family residence.
5. The Zoning Ordinance of the City of Mishawaka states that "The residential R-1 district is designed for detached single-family dwellings on individual lots, and vacant land which is to be developed for detached single-family residential neighborhoods. The regulations are designed to keep single-family residential neighborhoods stable and to provide a suitable environment for family living. (Sec. 137-164. Intent) The residential R-1 district permits detached single-family dwellings while multi-family dwellings are not among the permitted uses. (Sec. 137-165. Uses)
6. The Appellant purchased the above-described property on a land contract in 1981 from Cleland Homes/Larry Cleland. Prior to 1981 the property had been converted to a multi-family residence with three one-bedroom units and was in use as such by ClelandHomes/Larry Cleland. The Appellant bought the property in good faith, believing that it was in compliance with all city Ordinances. Since 1981 the Appellant has maintained the above-described property as a multi-family unit. Upon retirement and because of health concerns, the Appellant placed the property for sale and entered into a purchase agreement with a potential buyer. When the buyer approached their bank for a loan, it became apparent that the above-described property was not in compliance with the Zoning Ordinance of the City of Mishawaka. Strict adherence to the Ordinance requirements would cause a significant financial burden for the Appellant in returning it to a single family home. It would also negate the current purchase agreement causing additional financial hardship for the Appellant.

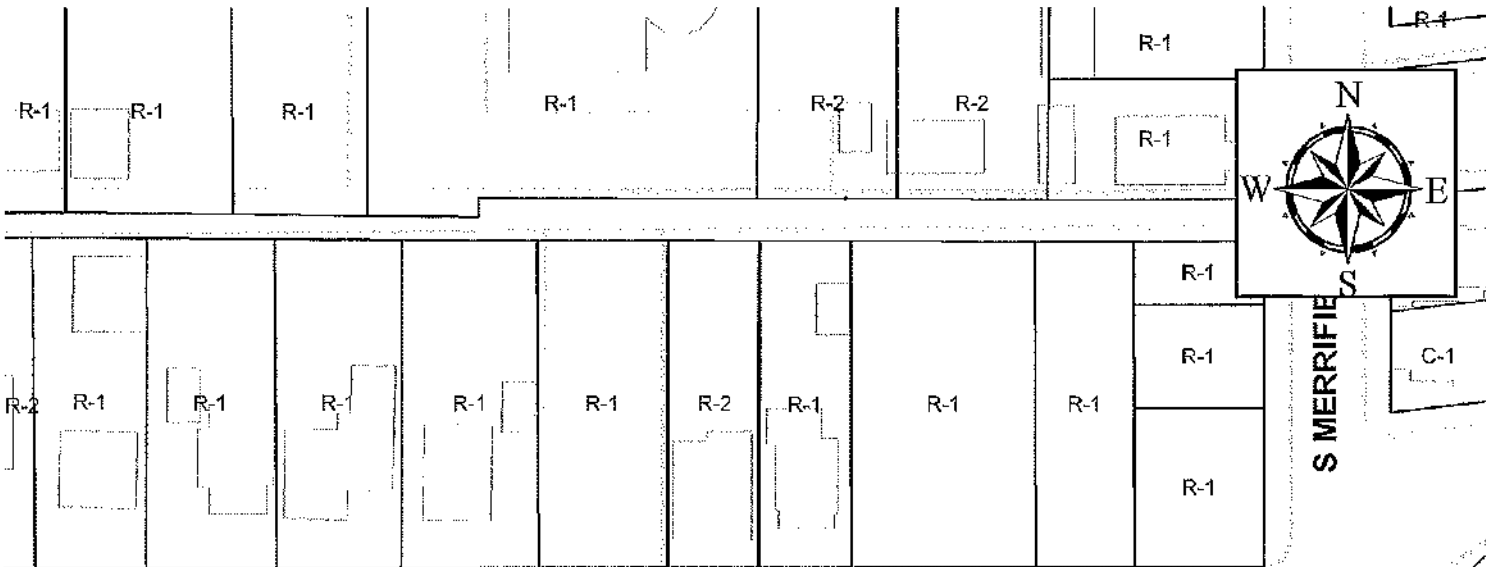
7. In requesting a Use Variance, the appellant wishes to note:

- (1) The property has been maintained in a safe and decent manner and has had no complaints from neighbors or the City of Mishawaka. Over the years it has been home to working singles, couples and single parents.
- (2) In its current use as a multi-family residence, it has not had an adverse effect on the value or use of adjacent properties as evidenced by the recent sale of 829 E Third Street on September 29, 2020 in the amount of \$147,500.
- (3) The above-described property does not have an interior staircase from the first floor to the second floor as would be necessary for a single family home. Instead it has a covered exterior staircase from the ground to the only entrance of the upper level apartment.
- (4) Requiring that the property be returned to a single family unit would result in a significant financial burden for the Appellant who is retired and on a limited fixed income.
- (5) The above-described property has been in use as a multi-family unit in a neighborhood of mixed single-family and multi-family houses for over forty years. It provides affordable housing in the community and would not interfere substantially with the Mishawaka 2000 Comprehensive Plan.

WHEREFORE, Appellant prays and respectfully requests a hearing on this appeal and that after such hearing, the Board grant the requested variance.

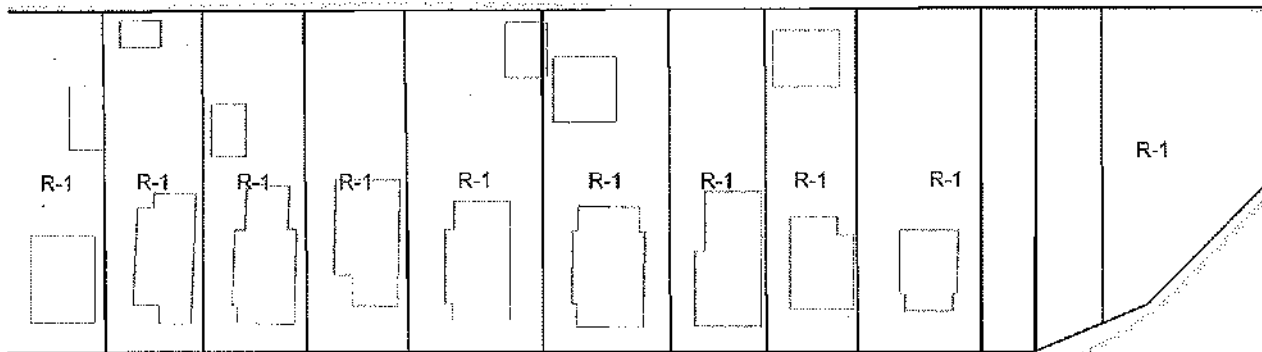
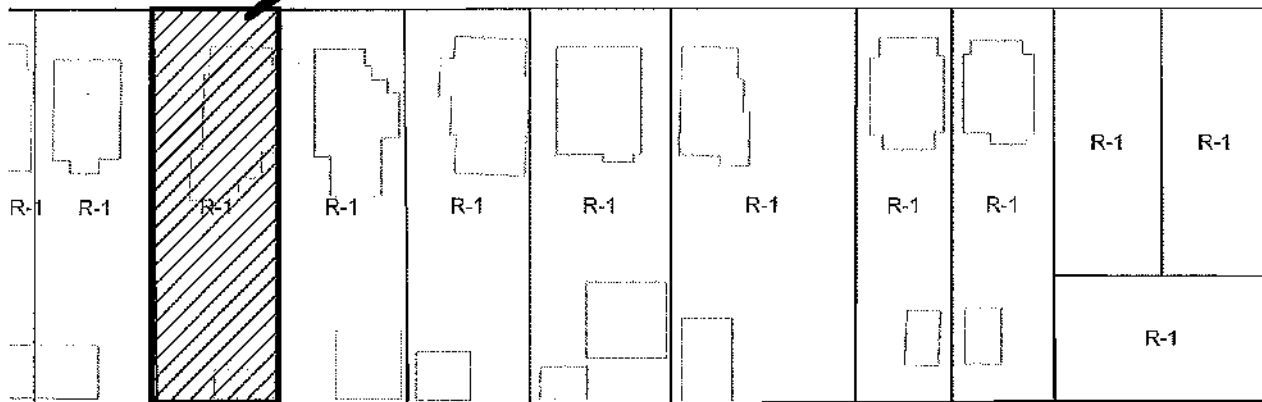
Steven Van Damme
1619 Rockwood Lane
Mishawaka, IN 46545
574-259-9468
stevevd8293@gmail.com





AP 20-52

E THIRD ST



Location Map

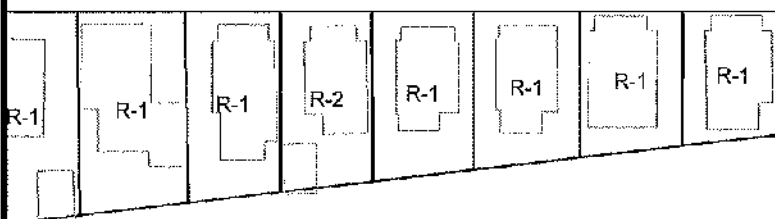
AP 20-52

STEVEN VAN DAMME

823 E THIRD

USE VARIANCE TO
MAINTAIN 3 UNITS IN
R-1 SINGLE FAMILY
RESIDENTIAL DISTRICT

ST



NOV 30 2020

PROPOSED ORDINANCE NO. 2020-45

CITY CLERK
MISHAWAKA, IN

ORDINANCE NO. _____

AN ORDINANCE DECLARING AN EMERGENCY AND
TRANSFERRING AND REAPPROPRIATING FUNDS
WITHIN THE BUDGET ADOPTED FOR THE
CALENDAR YEAR ENDING DECEMBER 31, 2020

BE IT ORDAINED BY THE COMMON COUNCIL OF THE CITY OF MISHAWAKA,
INDIANA, THAT:

Section 1. An emergency exists which requires the transfer and reappropriation of funds within the General Fund budget adopted for the fiscal year ending December 31, 2020.

Section 2. There is hereby transferred and reappropriated the sum of \$50,000.00 in the following budget:

General

From: **Capital Outlays**

101-02-413-05 Employee Health Insurance \$50,000.00

Total \$50,000.00

To: **Other Services and Charges**

101-02-434-90 Insurance, Claims \$50,000.00

Total \$50,000.00

Section 3. This ordinance shall be in full force and effect from and after its passage, signing and attestation.

PASSED BY THE COMMON COUNCIL of the City of Mishawaka,

Indiana, on this _____ day of _____, 2020 at _____ o'clock, _____ M.

Presiding Officer

ATTEST:

Deborah S. Block, IAMC, MMC, City Clerk

PRESENTED BY ME to the Mayor this _____ day of _____, 2020
at _____ o'clock, _____ M.

Deborah S. Block, IAMC, MMC, City Clerk

APPROVED BY ME this _____ day of _____, 2020
at _____ o'clock, _____ M.

David A. Wood, Mayor



CITY OF MISHAWAKA

DAVID A. WOOD, MAYOR

DEPARTMENT OF FINANCE
Rebecca S. Miller, Controller
Kurtis D. Vardaman, Deputy Controller

Date: November 20, 2020
To: Honorable Members of the Common Council
From: Rebecca Miller
Re: **Transfer of Funds – General fund – Controller**

For first reading on December 7th I am requesting a transfer of funds from health insurance to our liability, workers comp, and property insurance line.

The main reasons for the transfer are increased claims for worker's compensation and the addition of the Liberty Mutual building.

Please contact me with any questions.

c: David A. Wood – Mayor

PROPOSED ORDINANCE NO. 2020 - 46

ORDINANCE NO. _____

AN ORDINANCE AMENDING ORDINANCE 5712 FIXING THE SALARIES OF ALL EMPLOYEES OF THE CITY OF MISHAWAKA EXCEPT, MISHAWAKA PARK DEPARTMENT, ELECTED OFFICIALS AND THE MISHAWAKA UTILITIES FOR THE CITY OF MISHAWAKA, INDIANA, FOR THE YEAR BEGINNING JANUARY 1, 2021.

BE IT ORDAINED BY THE COMMON COUNCIL OF THE CITY OF MISHAWAKA, INDIANA, THAT:

Section 1. Ordinance number 5712 passed by the Common Council of the City of Mishawaka, Indiana, on the 5th of October 2020 is hereby amended as follows:

BIWEEKLY SALARY

FIRE:

1 ST CLASS FIREFIGHTER	2,364.34
-----------------------------------	----------

POLICE:

POLICE CHIEF	3,146.15
ASSISTANT CHIEF	2,920.98
CAPTAIN	2,545.64
LIEUTENANT	2,483.02
SERGEANT	2,423.89
1 ST CLASS OFFICER	2,364.34
2 ND CLASS OFFICER	2,110.71
PROBATIONARY	1,917.37

ANNUAL/MISC

POLICE:

2021 STIPEND	500
2021 MISHAWAKA CITY RESIDENT STIPEND	250

Section 2. The City will contribute 3% of the employee portion to the 1977 Police Pension for all employees eligible for participation in the 1977 Police Pension Fund.

Section 3. This ordinance shall be in full force and effect from and after its signing and attestation.

PASSED BY THE COMMON COUNCIL of the City of Mishawaka, Indiana, on

this _____ day of December 2020, at _____ o'clock, ____ m.

Gregg A. Hixenbaugh, Presiding Officer

ATTEST:

Deborah S. Block, IAMC, MMC, City Clerk

PRESENTED BY ME, to the Mayor on this _____ day of December 2020, at _____ o'clock, ____ m.

Deborah S. Block, IAMC, MMC, City Clerk

APPROVED BY ME this _____ day of December, 2020, at _____ o'clock, ____ m.

David A. Wood, Mayor



CITY OF MISHAWAKA

DAVID A. WOOD, MAYOR

DEPARTMENT OF FINANCE
Rebecca S. Miller, Controller
Kurtis D. Vardaman, Deputy Controller

Date: December 3, 2020
To: Honorable Members of the Common Council
From: Rebecca Miller
Re: Amendment to 2021 City Salary ordinance 5712

I am requesting first reading on Amended 2021 City Salary Ordinance.

The only changes are the items from Police negotiations, and one Fire negotiation item from the 2018 budget year where 1st Class Firefighter wage will be the same rate as a 1st Class Police Officer after four years.

Please contact me with any questions.

c: David A. Wood, Mayor
Ken Witkowski, Police Chief
Bryon Woodward, Fire Chief

A RESOLUTION APPROVING RENEWAL OF A WASTE REMOVAL CONTRACT

WHEREAS, Ind. Code 36-1-3 et seq. ("Home Rule Act") authorizes local governments to adopt reasonable regulations to promote the health, welfare and safety of local residents; and

WHEREAS, the Common Council of the City of Mishawaka has determined that a municipal waste collection, recycling and disposal system is necessary for maintaining the health, welfare and safety of the residents of Mishawaka; and

WHEREAS, the Board of Public Works and Safety has the authority to hire and contract for such a program; and

WHEREAS, the current waste removal contract between the City of Mishawaka and BFI Waste Services of Indiana, LP d/b/a Republic Services of Elkhart, ("Republic") will expire on December 31, 2020; and

WHEREAS, I.C. § 5-22-17-4 provides for renewal of contracts and Republic proposed a renewal contract for the period of January 1, 2021 through December 31, 2024, that meets the statutory criteria for such renewal; and

WHEREAS, the Board of Public Works and Safety, with input from the administration and Council, has determined that the proposed renewed contract with Republic for the above time period is in the best interests of the City of Mishawaka and its residents; and

WHEREAS, in the interest of collecting waste removal fees in an efficient, timely and responsible manner, the City of Mishawaka will continue to collect a one dollar (\$1.00) administrative fee for each bill to meet the City of Mishawaka's monthly financial responsibility to Republic.

NOW, THEREFORE, BE IT RESOLVED by the Common Council of the City of Mishawaka that the Council supports and approves of the attached Amendment to Contract for waste removal services.

PASSED by the Common Council of the City of Mishawaka, Indiana, this _____ day of December, 2020, at _____ o'clock p.m.

Gregg A. Hixenbaugh /s/
Presiding Officer

ATTEST:

Deborah S. Block /s/
Deborah S. Block, IAMC, MMC, City Clerk

PRESENTED by me to the Mayor this ____ day of ____ December 2020,
at ____ o'clock ____ a.m.

Deborah S. Block /s/
Deborah S. Block, IAMC, MMC, City Clerk

APPROVED by me this ____ day of ____ December, 2020, at
____ o'clock ____ a.m.

David A. Wood /s/
David A. Wood, Mayor



CITY OF MISHAWAKA

DAVID A. WOOD, MAYOR

DEPARTMENT OF LAW

November 24, 2020

Mishawaka Common Council
600 East Third Street
Mishawaka, Indiana 46544

Re: Solid Waste Removal Contract Extension

President and Honorable Council Members:

On November 24, 2020, the City of Mishawaka Board of Public Works and Safety approved the attached Amendment to Contract ("Amendment") between the City and BFI Waste Services of Indiana, LP d/b/a Republic Services of Elkhart. Pertinent details are as follows:

- A. The Amendment to the original Contract is subject to approval by the Mishawaka Common Council.
- B. If approved, the Amendment takes effect January 1, 2021, and extends to December 31, 2024.
- C. Article IV - Contract Price, is amended as follows:

2021 Rate Monthly
Regular Service \$ 14.77
Senior Service \$ 11.81

2022 Rate Monthly
Regular Service \$ 15.36
Senior Service \$ 12.29

2023 Rate Monthly
Regular Service \$ 15.98
Senior Service \$ 12.78

2024 Rate Monthly
Regular Service \$16.61
Senior Service \$ 13.28

Patrick J. Hinkle
Corporation Counsel
600 E. Third Street
Mishawaka, IN 46544
(574) 258-1702
fax: (574) 254-0197

John J. Roggeman
City Attorney
600 E. Third Street
Mishawaka, IN 46544
(574) 258-1702
fax: (574) 254-0197

David V. Bent
Assistant City Attorney
320 W. Fourth Street
Mishawaka, IN 46544
(574) 255-3680
fax: (574) 255-3969



CITY OF MISHAWAKA

DAVID A. WOOD, MAYOR

DEPARTMENT OF LAW

D. Article VII - Standards of Collection, § 7.2 Residential Curbside Recycling, is replaced with Exhibit A entitled, SPECIFICATIONS & PRICING FOR RECYCLING SERVICES. The specifications provide for the following:

1. Recycling Services Definitions.
 - 1.1 "Recyclable Materials" are used and/or discarded materials that are capable of successful processing and sale on the commodity market.
 - 1.2 "Acceptable Material" means the materials listed in Section 6 below.
 - 1.3 "Unacceptable Material" means the materials listed in Section 7 below.
 - 1.4 "Recycling Services" means the Contractor shall, one time each week, throughout the year on the same day as basic refuse collection, collect recyclables.
2. City's Duty. City is to do its best to educate and encourage Customers to place only Acceptable Materials in their recycling containers.
3. Right to Inspect/Audit. An audit may lead to a change in the rate for collection and processing if the level of unacceptable material rises above the threshold.
4. Reporting and Credit. The City's Recycling Commodity Credit will be annually adjusted depending on the total tons of Recyclable Material.
5. Changes in Market Conditions. If Republic can't sell acceptable material, it can redefine what is acceptable material and suspend or discontinue the recycling services.
6. Acceptable Material. All acceptable material must be empty, clean and dry. The following materials are acceptable:
 - Aluminum food and beverage containers - aluminum soda and beer cans, cat food cans, etc.
 - Ferrous Cans - soup, coffee cans, etc.
 - P.E.T. plastic containers with the symbol #1 - no microwave trays

Patrick J. Hinkle
Corporation Counsel
600 E. Third Street
Mishawaka, IN 46544
(574) 258-1702
fax: (574) 254-0197

John J. Roggeman
City Attorney
600 E. Third Street
Mishawaka, IN 46544
(574) 258-1702
fax: (574) 254-0197

David V. Bent
Assistant City Attorney
320 W. Fourth Street
Mishawaka, IN 46544
(574) 255-3680
fax: (574) 255-3969



CITY OF MISHAWAKA

DAVID A. WOOD, MAYOR

DEPARTMENT OF LAW

- H.D.P.E. natural plastic containers with the symbol #2 - milk jugs and water jugs containers only (narrow neck containers)
 - H.D.P.E. pigmented plastic containers with the symbol #2 - detergent, shampoo, bleach bottles without caps (narrow neck containers); butter and margarine tubs
 - Polypropylene plastic food and beverage containers symbol #5 - yogurt containers
 - Mixed Paper (54), as defined in the most recent ISRI Scrap Specifications Circular
 - Sorted Residential Paper and News (56), as defined in the most recent ISRI Scrap Specifications Circular
 - Kraft Paper Bags
 - Old Corrugated Containers (OCC) - no wax coated
 - Magazines (OMG) - Coated magazines, catalogues and similar printed materials, junk mail, and soft cover books
 - Aseptic Cartons - Juice boxes, gable top milk and juice containers, soymilk and soup cartons
 - Glass food and beverage containers - Flint (clear), Amber (brown), Emerald (green)
7. Unacceptable Material. Contractor may modify the following list of Unacceptable Materials in its sole and absolute discretion but will provide City with at least thirty (30) days' prior written notice of any such modifications.
- Styrofoam
 - Pizza Boxes, unless free of any food or grease residue
 - Food
 - Any liquids
 - Diapers
 - Clothing/textiles
 - Plastic Bags or bagged material (newsprint may be placed in a Kraft bag)
 - Plastic containers with no # at all
 - Mirrors, window or auto glass, light bulbs, ceramics
 - Oil or antifreeze containers
 - Coat hangers
 - Paint cans
 - Medical Waste/Sharps

Patrick J. Hinkle
Corporation Counsel
600 E. Third Street
Mishawaka, IN 46544
(574) 258-1702
fax: (574) 254-0197

John J. Roggeman
City Attorney
600 E. Third Street
Mishawaka, IN 46544
(574) 258-1702
fax: (574) 254-0197

David V. Bent
Assistant City Attorney
320 W. Fourth Street
Mishawaka, IN 46544
(574) 255-3680
fax: (574) 255-3969



CITY OF MISHAWAKA

DAVID A. WOOD, MAYOR

DEPARTMENT OF LAW

- Any Acceptable Material that is no longer acceptable due to its coming into contact with or being contaminated by Unacceptable Material

Sincerely

A handwritten signature in cursive script, which appears to read "Patrick J. Hinkle".

Patrick J. Hinkle

Patrick J. Hinkle
Corporation Counsel
600 E. Third Street
Mishawaka, IN 46544
(574) 258-1702
fax: (574) 254-0197

John J. Roggeman
City Attorney
600 E. Third Street
Mishawaka, IN 46544
(574) 258-1702
fax: (574) 254-0197

David V. Bent
Assistant City Attorney
320 W. Fourth Street
Mishawaka, IN 46544
(574) 255-3680
fax: (574) 255-3969



CITY OF MISHAWAKA

David A. Wood, MAYOR

BOARD OF PUBLIC WORKS & SAFETY

Kenneth B. Prince, President
Rebecca S. Miller, Vice-President
Ronald E. Watson, Member
Kari Myers, Clerk

November 30, 2020

Cody Humphrey
BFI Waste Services of Indiana, LP
57820 Charlotte Ave.
Elkhart, IN 46517

RECEIVED
DEBORAH S. BLOCK, MMC

NOV 30 2020

CITY CLERK
MISHAWAKA, IN

Re: Waste Collection Contract Renewal
January 1, 2021 through December 31, 2024

Gentlemen:

At its regular meeting on Tuesday, November 24, 2020, the Board of Public Works and Safety approved the enclosed Amendment to Contract for the Collection of Waste, subject to approval by the Common Council. It is anticipated that the Common Council will schedule this matter for discussion and decision at its meeting on December 7, 2020 at 7:00 pm. Once the Common Council has approved this contract renewal, please provide updated bonds and insurance for our files. Mr. Tim Ryan, Street Commissioner, will continue as your contact for these services.

Please contact Mr. Ryan at 574-258-1660 if you have questions regarding this matter. Questions regarding the upcoming Common Council meeting should be directed to the City Clerk's office at 258-1616.

Very truly yours,

Kenneth B. Prince
President, Board of Public Works and Safety

Enclosure

- c: Clerk of the Board, with original
- Deb Block, City Clerk, with original
- Tim Ryan, Street Commissioner, with copy
- Pat Hinkle, Corporation Counsel, with copy
- Project File, with copy

AMENDMENT TO CONTRACT

The parties to this Amendment to Contract ("Amendment") are the City of Mishawaka, a municipality organized under the State of Indiana ("City"), and BFI Waste Services of Indiana, LP, a Delaware Limited Partnership d/b/a Republic Services of Elkhart ("Contractor"). This Amendment is effective and enforceable as of January 1, 2021 ("Effective Date") provided it is approved by the Common Council of the City Mishawaka beforehand.

Recitals

A. The City and Contractor entered into a Contract for the Collection of Solid Waste, dated November 18th, 2008, which was subsequently amended on October 2, 2012, and again on August 2, 2016, (collectively, the "Contract").

B. The City and Contractor have now agreed to extend the Contract and modify the terms as identified below.

Agreement

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which the parties acknowledge, the parties agree to the following terms and conditions:

1. Term. The term of the Contract is hereby extended for an additional four-year term, commencing on the Effective Date and now terminating on December 31, 2024. The term may be extended for additional four year terms, upon mutual agreement of the parties.

2. Recycling. Commencing on the Effective Date, Section 7.2 of the Contract is deleted and is replaced with the Exhibit A.

3. Contract Price. Pricing for the extended four-year term shall be as follows:

2020 Rate Monthly (Current)

Regular Service	\$13.86
Senior Service	\$11.09

2021 Rate Monthly

Regular Service	\$ 14.77
Senior Service	\$ 11.81

2022 Rate Monthly

Regular Service	\$ 15.36
Senior Service	\$ 12.29

2023 Rate Monthly

Regular Service	\$ 15.98
Senior Service	\$ 12.78

2024 Rate Monthly

Regular Service	\$16.61
Senior Service	\$ 13.28

4. House Count: once per quarter the City will provide an updated House Count to the Contractor and Contractor will base invoicing for services on that House Count. The house count as of the Effective Date is 14,472.

5. Capitalized Terms. Capitalized terms used but not otherwise defined in this Amendment shall have the meanings assigned to them in the Contract.

6. Continuing Effect. Except as expressly modified or amended by this Amendment, all terms and provisions of the Contract shall remain in full force and effect. In the case of a conflict in meaning between the Contract and this Amendment, this Amendment shall prevail.

7. Counterparts. This Amendment may be executed in one or more counterparts, each of which shall be deemed an original and all of which combined shall constitute one and the same instrument. Facsimile and/or electronic copies of the parties' signatures shall be valid and treated the same as original signatures.

IN WITNESS WHEREOF, the parties have entered into this Amendment to be effective as of the Effective Date.

BFI WASTE SERVICES OF INDIANA, L.P.

BY: Cody Humphrey
Cody Humphrey, General Manager

11/23/2020
Date

Approved by the Board of Public Works and Safety - City of Mishawaka, Indiana:

11/24/2020
Date

[Signature]
Kenneth B. Prince, President

Rebecca S. Miller
Rebecca S. Miller, Vice President

[Signature]
Ronald E. Watson, Member

ATTEST: Kari Meyers
Kari Meyers, Clerk of the Board

EXHIBIT A
SPECIFICATIONS & PRICING FOR RECYCLING SERVICES

1. Recycling Services Definitions.

- 1.1 **"Recyclable Materials"** are used and/or discarded materials that are capable of successful processing and sale on the commodity market.
- 1.2 **"Acceptable Material"** means the materials listed in Section 6 below.
- 1.3 **"Unacceptable Material"** means the materials listed in Section 7 below. All Recyclable Materials collected for delivery and sale by Contractor shall be hauled to a processing facility selected by Contractor for processing ("Recycling Services").
- 1.4 **"Recycling Services"** means the Contractor shall, one time each week, throughout the year on the same day as basic refuse collection, collect recyclables, as described in Section 5.v, from each residential dwelling unit in the City. This service shall consist of the mandatory curbside collection of specified recyclable materials within the City of Mishawaka; and the processing of approved recyclable materials at the Processing Center for sale.

2. City's Duty. City shall make a commercially reasonable effort to educate its Customers regarding Acceptable and Unacceptable Materials and to encourage its Customers to place only Acceptable Materials in their recycling containers.

3. Right to Inspect/Audit. Contractor may visually inspect the collected Recyclable Materials to ensure loads are at or below the Unacceptable Material Threshold. If Contractor's visual inspector determines that loads of Recyclable Material are consistently above the Unacceptable Material Threshold, Contractor will notify City of the issue and the parties agree to promptly negotiate in good faith (a) an agreed upon procedure to audit a representative sample of City's Recyclable Material to determine its actual composition of Unacceptable Material; and (b) an updated Collection and Processing rate commensurate with the composition of Unacceptable Material.

4. Reporting and Credit. Contractor will provide City with an annual report detailing the total tons of Recyclable Material received from the City during the previous year and the calculation of City's Recycling Commodity Credit for that year.

5. Changes in Market Conditions. If market conditions develop that limit or inhibit Contractor from selling some or all of the Acceptable Material, Contractor may at its option and upon notice to Supplier (i) redefine Acceptable and Unacceptable Materials, (ii) update the processing facility's Average Commodity Mix; (iii) suspend or discontinue any or all Services, or (iv) dispose of the Acceptable Material (as currently defined) in a landfill and update the pricing

to City accordingly. Any such actions, if taken, may be reversed or further changed as market conditions dictate.

6. Acceptable Material. All material must be empty, clean and dry. Contractor may modify the following list of Acceptable Materials in its sole and absolute discretion but will provide City with at least thirty (30) days' prior written notice of any such modifications.

- Aluminum food and beverage containers - aluminum soda and beer cans, cat food cans, etc.
- Ferrous Cans - soup, coffee cans, etc.
- P.E.T. plastic containers with the symbol #1 - no microwave trays
- H.D.P.E. natural plastic containers with the symbol #2 - milk jugs and water jugs containers only (narrow neck containers)
- H.D.P.E. pigmented plastic containers with the symbol #2 - detergent, shampoo, bleach bottles without caps (narrow neck containers); butter and margarine tubs
- Polypropylene plastic food and beverage containers symbol #5 - yogurt containers
- Mixed Paper (54), as defined in the most recent ISRI Scrap Specifications Circular
- Sorted Residential Paper and News (56), as defined in the most recent ISRI Scrap Specifications Circular
- Kraft Paper Bags
- Old Corrugated Containers (OCC) - no wax coated
- Magazines (OMG) - Coated magazines, catalogues and similar printed materials, junk mail, and soft cover books
- Aseptic Cartons - Juice boxes, gable top milk and juice containers, soymilk and soup cartons
- Glass food and beverage containers - Flint (clear), Amber (brown), Emerald (green)

7. Unacceptable Material. Contractor may modify the following list of Unacceptable Materials in its sole and absolute discretion but will provide City with at least thirty (30) days' prior written notice of any such modifications.

- Styrofoam
- Pizza Boxes, unless free of *any* food or grease residue
- Food
- Any liquids
- Diapers
- Clothing/textiles
- Plastic Bags or bagged material (newsprint may be placed in a Kraft bag)
- Plastic containers with no # at all
- Mirrors, window or auto glass, light bulbs, ceramics
- Oil or antifreeze containers
- Coat hangers
- Paint cans
- Medical Waste/Sharps
- Any Acceptable Material that is no longer acceptable due to its coming into contact with or being contaminated by Unacceptable Material

NOV 12 2020

CITY CLERK
MISHAWAKA, IN

PETITION 20-22

CITY OF MISHAWAKA, INDIANA

PROPOSED ORDINANCE NO. 2020-43

ORDINANCE NO. _____

AN ORDINANCE AMENDING CHAPTER 137, OF THE MUNICIPAL CODE OF THE CITY OF MISHAWAKA, INDIANA, AS FROM TIME TO TIME AMENDED, COMMONLY KNOWN AS "THE ZONING ORDINANCE OF 1966" OF THE CITY OF MISHAWAKA, INDIANA.

WHEREAS, the Plan Commission of the City of Mishawaka, Indiana, has recommended the reclassification of the zoning as herein set forth of the real estate hereinafter described.

NOW, THEREFORE, BE IT ORDAINED BY THE COMMON COUNCIL OF THE CITY OF MISHAWAKA, INDIANA, that:

Section 1. Chapter 137, of the Municipal Code of the City of Mishawaka, commonly known as "The Zoning Ordinance of 1966", be, and the same is hereby amended as follows:

The following described real estate in the City of Mishawaka, Penn Township, St. Joseph County, State of Indiana, to-wit:

Lot 4, Bowmans 1st, City of Mishawaka, Penn Township, St. Joseph County, State of Indiana

COMMON ADDRESS: 2316 Lincolnway West

which real estate is now classified as C-1 General Commercial District shall hereafter be within and a part of that District known as R-1 Single Family Residential District designated in "The Zoning Ordinance of 1966" as amended.

Section 2. The Common Council of the City of Mishawaka, Indiana, hereby finds that:

1. There are commercial uses south of the property, but the neighborhood surrounding the property, mainly to the north, is primarily residential in nature, and rezoning the property to R-1 would be compatible to the area;
2. Use and value of the area adjacent to the property included in the rezoning will not be affected in a substantially adverse manner because given the context of its location, its relationship to surrounding properties, and the potential of development as a commercial project, staff feels that the most desirable use for this property is a single-family use;
3. Because the parcel is located in an area of residential uses, the rezoning to R-1 Single-Family Residential is a desirable use for this property;

Proposed Ordinance No: 2020-43

Ordinance No: _____

4. As opposed to the range of potential commercial development that could occur with its current zoning, rezoning this property to the R-1 Single-family Residential classification will have a favorable and stabilizing impact on the neighborhood, conserving property values in the immediate and surrounding residential neighborhood; and,
5. The City's Comprehensive Plan calls for general commercial, but its use as a single-family home would be compatible and consistent with the historic residential uses in the area.

Section 3. This Ordinance shall be in full force and effect from and after its passage, due attestation and legal publication.

PASSED by the Common Council of the City of Mishawaka, Indiana, this _____ day of _____, 2020, at _____ o'clock ____ M.

Presiding Officer

ATTEST:

Deborah S. Block, IAMC, MMC, City Clerk

PRESENTED by me to the Mayor this _____ day of _____, 2020, at _____ o'clock ____ M.

Deborah S. Block, IAMC, MMC, City Clerk

APPROVED by me this _____ day of _____, 2020, at _____ o'clock ____ M.

David A. Wood, Mayor

STAFF REPORT

Location: 2316 Lincolnway West

Date: Nov 10, 2020

Petition: 20 22

Prepared By: KM

GENERAL INFORMATION

Applicant: John M. Palmer
Status: Property Owner
Request: Rezone from C-1 General Commercial District to R-1 Single Family Residential
Zoning Classification: C-1 General Commercial District
Lot Size: 42' X 130.85'
Applicable Regulations: Sec. 137-164 Residential R-1 District; Sec. 137-40 Plan Commission; & Sec. 137-41 Amendment to Zoning Ordinance and Zoning Map

SPECIAL INFORMATION

Area Development Pattern: North: R-1 Single Family Residential District
South: C-7 Automobile Oriented Restaurant Commercial District
East: R-2 Two-Family Residential District
West: C-1 General Commercial District

Thoroughfare: Northeast corner of Lincolnway West and River Avenue

School District: School City of Mishawaka

Public Utilities: Available

Comprehensive Plan: General Commercial

ANALYSIS

The Petitioner is requesting to rezone 2316 Lincolnway West from C-1 General Commercial District to R-1 Single Family Residential District. The property is located on the northeast corner of Lincolnway West and River Avenue. The neighborhood is a mix of residential and commercial uses along Lincolnway.

The Petitioner is selling the property and feels the market would be stronger selling as a single-family residence. He states it has been used as an office for a number of years, but is fully set up to be a single-family home and has a detached two-stall garage. It was built in 1922 as a single family residence.

Prior to the 1980's residential uses were permitted in commercial zoned districts. Around 1986 the Zoning Ordinance was amended to prohibit residential uses in certain districts.

Pertinent City Departments have reviewed and approved the request.

RECOMMENDATION

The Planning Department recommends **approval** of Petition #20-22 to rezone 2316 Lincolnway West from C-1 General Commercial District to R-1 Single Family Residential District. This recommendation is based upon the following findings of fact:

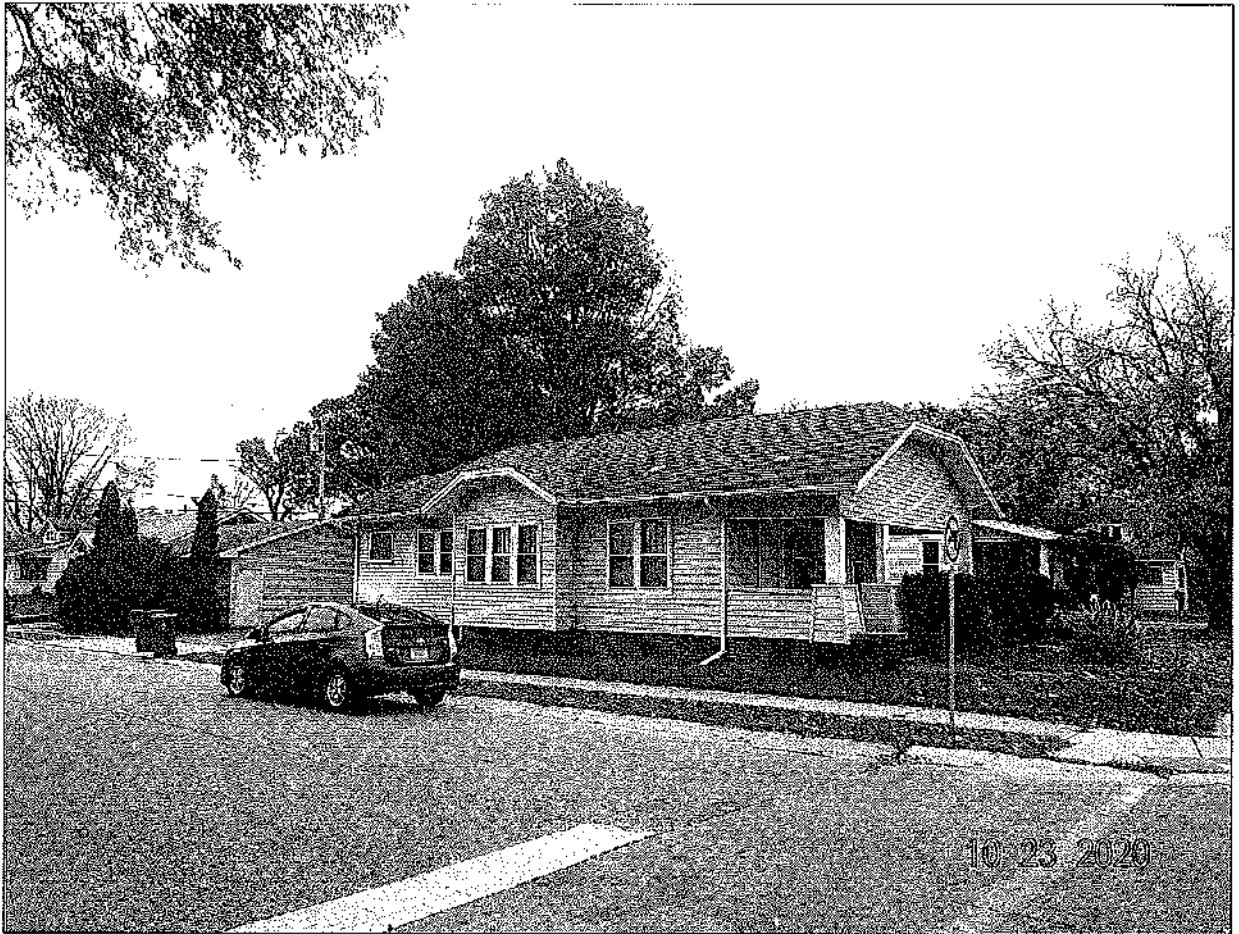
1. There are commercial uses south of the property, but the neighborhood surrounding the property, mainly to the north, is primarily residential in nature, and rezoning the property to R-1 would be compatible to the area;
2. Use and value of the area adjacent to the property included in the rezoning will not be affected in a substantially adverse manner because given the context of its location, its relationship to surrounding properties, and the potential of development as a commercial project, staff feels that the most desirable use for this property is a single-family use;
3. Because the parcel is located in an area of residential uses, the rezoning to R-1 Single-Family Residential is a desirable use for this property;
4. As opposed to the range of potential commercial development that could occur with its current zoning, rezoning this property to the R-1 Single-family Residential classification will have a favorable and stabilizing impact on the neighborhood, conserving property values in the immediate and surrounding residential neighborhood; and,
5. The City's Comprehensive Plan calls for general commercial, but its use as a single-family home would be compatible and consistent with the historic residential uses in the area.

ATTACHMENTS

PETITION, PHOTOGRAPHS, AERIAL, LOCATION MAP



2316 Lincolnway West

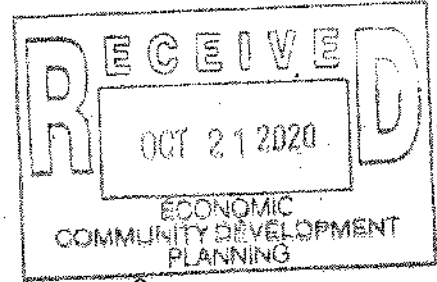


Looking to the site from the west

RECEIVED
DEBORAH S. BLOCK, MMC

OCT 29 2020

CITY CLERK
MISHAWAKA, IN



Pet 20-22

Oct 20, 2020

Honorable Members of the
Common Council
City of Mishawaka, Indiana
and Mishawaka City Plan Commission
City of Mishawaka, Indiana

RE: PETITION TO REZONE

The undersigned John M Palmer respectfully show they are the owner of the following described real estate located in the City of Mishawaka, County

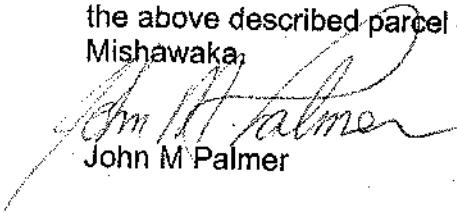
of St. Joseph, State of Indiana, to wit:

2316 Lincolnway W. Mishawaka, In 46544, Legal Description: Lot 4 Bowmans 1st
Add. Tax Key Number: 71-09-17-327-003.000-023.

Petitioner(s) own one hundred (100%) percent of the described parcel of land which carries a zoning classification of C-1 District. Said property is (was) being used as an office.

Petitioner(s) desire said real estate to be zoned to R-1 District. Petitioner(s) further state they intend to utilize said land for a residential use.

Wherefore, the petitioner(s) pray and respectfully request that the common council of the City of Mishawaka refer this matter to the Mishawaka City Plan Commission and that after hearing, an appropriate ordinance be enacted rezoning the above described parcel of land located in the City of Mishawaka.

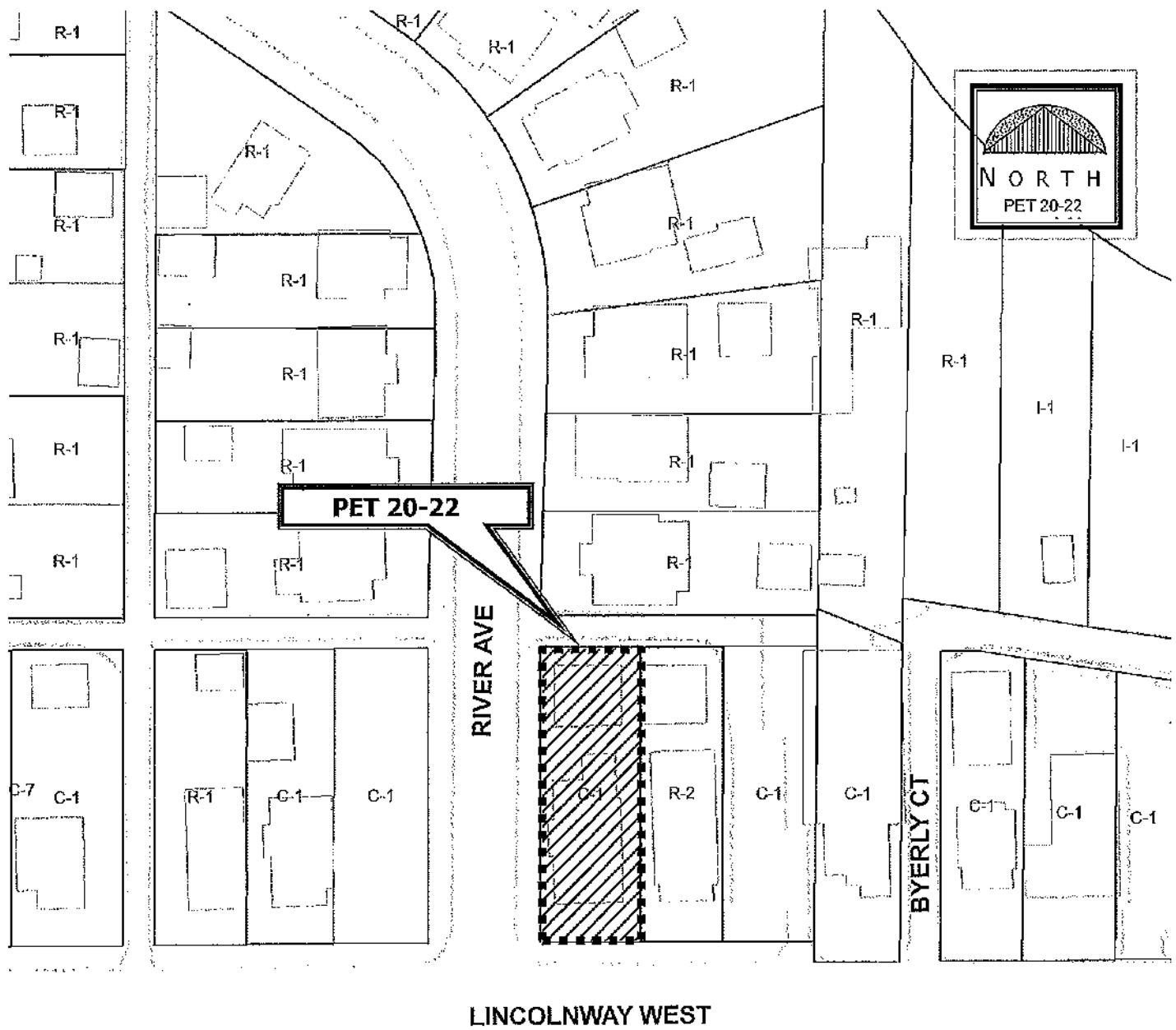

John M Palmer

CONTACT PERSON:

John M Palmer
3040 Springbrook Dr , South Bend, In
574-876-1234
john_p46614@yahoo.com

PETITION #20-22
2316 Lincolnway West





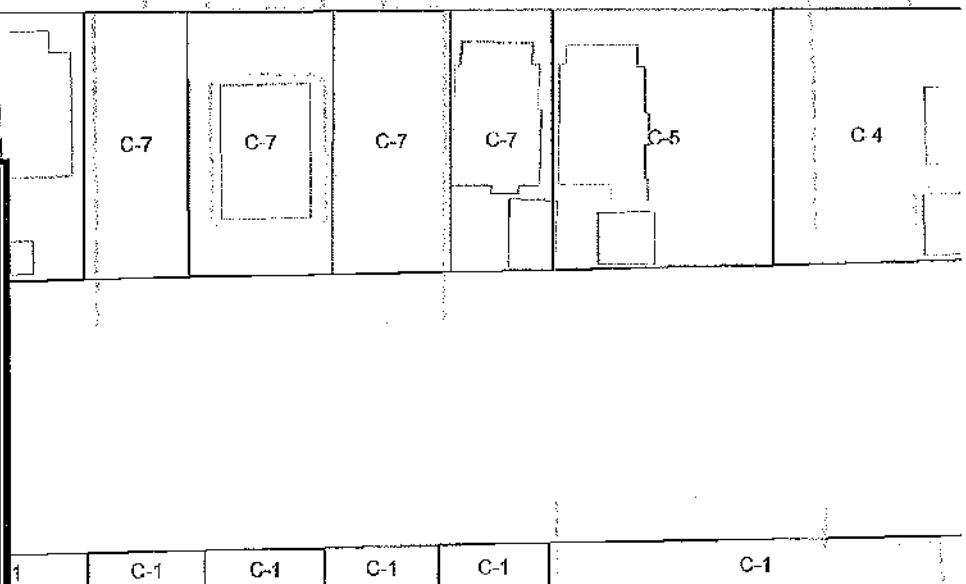
Location Map

PET 20-22

JOHN M. PALMER (OWNER)

2316 LINCOLN WAY WEST

REZONING FROM C-1 DISTRICT
TO THE R-1 DISTRICT FOR
RESIDENTIAL USE



NOV 12 2020

PETITION 20-23

CITY OF MISHAWAKA, INDIANA

CITY CLERK
MISHAWAKA, IN

PROPOSED ORDINANCE NO. 2020-44

ORDINANCE NO. _____

AN ORDINANCE AMENDING CHAPTER 137, OF THE MUNICIPAL CODE OF THE CITY OF MISHAWAKA, INDIANA, AS FROM TIME TO TIME AMENDED, COMMONLY KNOWN AS "THE ZONING ORDINANCE OF 1966" OF THE CITY OF MISHAWAKA, INDIANA.

WHEREAS, the Plan Commission of the City of Mishawaka, Indiana, has recommended the reclassification of the zoning as herein set forth of the real estate hereinafter described.

NOW, THEREFORE, BE IT ORDAINED BY THE COMMON COUNCIL OF THE CITY OF MISHAWAKA, INDIANA, that:

Section 1. Chapter 137, of the Municipal Code of the City of Mishawaka, commonly known as "The Zoning Ordinance of 1966", be, and the same is hereby amended as follows:

The following described real estate in the City of Mishawaka, Penn Township, St. Joseph County, State of Indiana, to-wit:

A PART OF THE NORTHEAST QUARTER OF SECTION 9, TOWNSHIP 37 NORTH, RANGE 3 EAST, PENN TOWNSHIP, CITY OF MISHAWAKA, ST. JOSEPH COUNTY, INDIANA WHICH IS DESCRIBED AS: LOT # 4 OF THE PLAT OF "MAIN-MCKINLEY SUBDIVISION" AS RECORDED BY DOCUMENT NUMBER 1533244 IN THE RECORDS OF THE ST. JOSEPH COUNTY, INDIANA RECORDER'S OFFICE, LOTS # 10, 11 AND 12 OF THE PLAT OF "SHIVEY'S FIRST SUBDIVISION" AS RECORDED IN PLAT BOOK # 15 ON PAGE # 3 IN THE RECORDS OF SAID RECORDER'S OFFICE, EXCEPTING FROM SAID LOTS # 10, 11 AND 12, THAT PORTION OF SAID LOTS TAKEN FOR RIGHT-OF-WAY FOR MAIN STREET AND A PARCEL OF GROUND DESCRIBED AS: BEGINNING AT THE SOUTHWEST CORNER OF SAID LOT # 10; THENCE NORTH 89°38'38" WEST ALONG THE NORTH RIGHT-OF-WAY LINE OF RUSS STREET FOR A DISTANCE OF 218.24 FEET MORE OR LESS; THENCE NORTH 00°07'31" EAST A DISTANCE OF 225.24 FEET MORE OR LESS TO THE SOUTH RIGHT-OF-WAY LINE OF MC KINLEY HIGHWAY; THENCE ALONG SAID SOUTH LINE FOR THE NEXT FOUR (4) COURSES, SOUTH 87°22'28" EAST, A DISTANCE OF 44.73 FEET MORE OR LESS AND NORTH 89°41'28" EAST, A DISTANCE OF 20.00 FEET MORE OR LESS AND SOUTH 85°28'21" EAST, A DISTANCE OF 130.47 FEET MORE OR LESS AND SOUTH 89°41'28" EAST, A DISTANCE OF 22.15 FEET MORE OR LESS TO THE NORTHWEST CORNER OF SAID LOT # 4. CONTAINING 1.09 ACRES MORE OR LESS. SUBJECT TO ALL LEGAL RIGHT-OF-WAYS, AND EASEMENTS, AND RESTRICTIONS OF RECORD.

COMMON ADDRESSES: 119 West McKinley Avenue, 2219 North Main Street, 2205 North Main Street, vacant land adjacent to and north of 2205 North Main Street, and 2201 North Main Street

Proposed Ordinance No: 2020-44

Ordinance No: _____

which real estate is now classified as C-7 Automobile Oriented Restaurant Commercial District and R-1 Single Family Residential District shall hereafter be within and a part of that District known as C-10 Filling Station Commercial District designated in "The Zoning Ordinance of 1966" as amended.

Section 2. The Common Council of the City of Mishawaka, Indiana, hereby finds that:

1. Existing Conditions -- The subject property consists of a restaurant and four vacant parcels at the southwest corner of W. McKinley Avenue and N. Main Street. These roads are highly travelled corridors providing major north-south and east-west access through the City of Mishawaka and South Bend. Adjacent land uses include an automobile sales and service business and pharmacy to the north, an auto parts retailer to the west, single-family residential houses to the south, and restaurant with drive-thru to the east.
2. Character of Buildings -- The character of the buildings in the area are predominantly commercial and single-family residential.
3. The most desirable/highest and best use -- Because of the property's location and the prior and existing commercial uses, the most desirable use of the property is commercial. Although single-family residential properties are adjacent to the south across W. Russ Street, the high traffic volumes along W. McKinley Avenue and N. Main Street make long term use of the current residentially zoned properties undesirable for residential purposes. Furthermore, a large portion of the property is currently zoned for commercial use.
4. Conservation of property values -- The proposed rezoning should not be injurious to property values in the surrounding area as the existing C-7 Automobile Oriented Restaurant Commercial zoning classification permits commercial uses on a majority of the property. Landscaping and screening will be required per the C-10 Filling Station / Car Wash Commercial District to adequately buffer the proposed use from the adjacent residential properties.
5. Comprehensive Plan -- The 2000 Mishawaka Comprehensive Plan, created in 1990, guided general commercial development within this property. The proposal is consistent with the Comprehensive Plan.

Section 3. This Ordinance shall be in full force and effect from and after its passage, due attestation and legal publication.

PASSED by the Common Council of the City of Mishawaka, Indiana, this _____ day of _____, 2020, at _____ o'clock ____ M.

Presiding Officer

Proposed Ordinance No: 2020-44

Ordinance No: _____

ATTEST:

Deborah S. Block, IAMC, MMC, City Clerk

PRESENTED by me to the Mayor this _____ day of _____,
2020, at _____ o'clock _____ M.

Deborah S. Block, IAMC, MMC, City Clerk

APPROVED by me this _____ day of _____, 2020, at
_____ o'clock _____ M.

David A. Wood, Mayor

STAFF REPORT

Location: Southwest Corner of W. McKinley Avenue & N. Main Street -
119 W. McKinley Avenue & Vacant Parcels to the East

Date: November 10, 2020

Petition: 20- 23

Prepared By: DJS

GENERAL INFORMATION

Applicant: Graber Group LP, et. al represented by Peter J Agostino (AAK Law) / Danch, Harner & Associates, Inc.

Status: Property Owner & Legal Representative / Site Design Consultant

Request: To rezone from C-7 Auto Oriented Restaurant Commercial District and R-1 Single Family Residential District to C-10 Filling Station / Car Wash District to allow for the construction of a convenience store with gas pumps

Zoning Classification: C-7 Auto Oriented Restaurant Commercial District and R-1 Single Family Residential District

Lot Size: 1.09 acres

Applicable Regulations: Section 137-529 thru 137-530 / C-10 Filling Station – Car Wash District & Section 137-41 / Amendments to the Zoning Map

SPECIAL INFORMATION

Area Development Pattern: North: C-4 Auto Oriented Commercial (Automobile Sales & Service / Michiana Chrysler Dodge Jeep RAM Fiat) & C-1 General Commercial (Pharmacy / Walgreen's)

South: R-1 Single Family Residential (Residential)

East: C-7 Auto Oriented Restaurant Commercial (Restaurant with Drive-Thru / Dairy Queen)

West: C-1 General Commercial (Auto Parts Retailer / O'Reilly Auto Parts)

Thoroughfare: W. McKinley Avenue & N. Main Street

School District: School City of Mishawaka

Township: Penn

Public Utilities: All utilities are available and/or will be extended/connected to the site at the expense of the developer.

Comprehensive Plan: General Commercial (Retail Sales & Shopping Centers)

ANALYSIS

The Petitioners, Graber Group LP, Larry & Freda Scheibelhut, Dennis & Karen Culp, Mary Lou Seltzer and Thomas Scheibelhut, are requesting to rezone an approximate 1.09 acre area located at the southwest corner of W. McKinley Avenue and N. Main Street from C-7 Auto Oriented Restaurant Commercial and R-1

Single Family Residential to C-10 Filling Station / Car Wash to allow for the construction of a convenience store with gas pumps.

The site includes five separate parcels. The west parcel (Tax Parcel 016-2046-1551.08 / 119 W. McKinley Avenue) is occupied by Fiesta Tapatia, a dine-in restaurant formerly a Wendy's fast food restaurant. The vacant parcel at the far northeast corner (Tax Parcel 016-2117-3790) was previously developed with a commercial structure and occupied by Edward Jones Investments until the mid-2000s. The building was demolished as a part of the N. Main Street Improvement project completed in the late 2000s. Until 2017, two single-family residential houses were located on the vacant parcels within the far southeast corner (Tax Parcels 016-2117-3787/3788). Both of the houses were relocated to accommodate future commercial development. According to Polk Directories from the mid-1990s, the other remaining vacant parcel (Tax Parcel 016-2117-3789) was occupied with a commercial structure until being razed in the mid-1990s. With the proposed redevelopment of the site, all existing improvements will be razed.

Per the preliminary site plan submitted with the rezoning petition, the contingent developer is proposing to construct a one-story 4,650 sq. ft. convenience store with gas pumps, a forty-four (44) space parking lot, and other required infrastructure (access drives, stormwater drainage system, landscaping, etc.).

Access to the site is currently proposed from both W. McKinley Avenue to the north and W. Russ Street to the south. The W. McKinley Avenue access will be right-in/right-out only in order to restrict left-hand turns into and from the property for west bound traffic. The W. Russ Street access will allow for unrestricted turning movements. Planning and Engineering Staff requested that an internal access drive be provided between the property and the adjacent auto parts store to the west. Establishing cross-access between the properties would be beneficial to both sites and allow for additional means of ingress-egress during periods of peak traffic.

Additional right-of-way will need to be dedicated via a plat along both W. McKinley Avenue and N. Main Street. The expanded right-of-way will be utilized for widening the right-turn lane along W. McKinley Avenue and new sidewalks along both W. McKinley Avenue and N. Main Street frontage.

The landscaping, conceptually shown, shall comply with the commercial landscaping requirements. In addition, Planning Staff requests that a multilayered landscaping screen consisting of both evergreens and deciduous plantings be provided along the entire south property line to screen the adjacent residential properties south of W. Russ Street. The types of plantings shall be varied to establish a permanent solid screen during all seasons. A 4' high ornamental fence shall also be incorporated into the landscape plantings and be provided along the entire south property line. *A written commitment from the Applicant is required for the landscaping and fencing, as outlined above, and shall be provided prior to consideration by the Common Council.* The landscaping plan shall be reviewed and approved as a part of the final site plan process.

The conceptual site plan shows that the site will comply with the required height, area and developmental regulations for the C-10 Filling Station / Car Wash District. If any variances from these regulations are required, the Board of Zoning Appeals shall be petitioned when the final site plan is submitted.

With this petition, the Applicant and contingent purchaser are only seeking to establish the proper zoning required for the proposed use. If approved, a detailed final site plan shall be submitted for Staff review and Plan Commission approval prior to construction. The final site plan shall address storm drainage, grading, utilities, landscaping, soil erosion control, and all other required improvements pertinent to the proposed development.

Since a majority of the property is currently zoned for commercial use and located along the McKinley Avenue commercial corridor, the Staff supports the request for rezoning. The proposed convenience store with gas pumps is not out of character, and with the required landscaping and screening, is compatible with the existing adjacent land uses. The proposed use is also consistent with the historical uses and recommended use per the comprehensive plan.

The Building, Fire, Electric, and Water Departments have reviewed and approved the rezoning request providing no additional comments.

The Engineering Department had no comments related to the rezoning petition but provided the following comments to be addressed with the final site plan:

1. Extend the throat of the access drive at the southeast corner and remove approximately 5-6 parking spaces to prevent blocking of entrance to incoming vehicles.
2. Ensure the 8' wide pathway (sidewalk) is an appropriate width all the way to the curb ramp. Curb ramp may need to be modified.
3. Ensure the pork chop island is mountable and make bigger to shrink pavement width.
4. Jog path on the west side of the drive approach to north so when extended west it does not affect the existing parking lot to the west.
5. Dedicate additional right-of-way along both W. McKinley Avenue and N. Main Street.

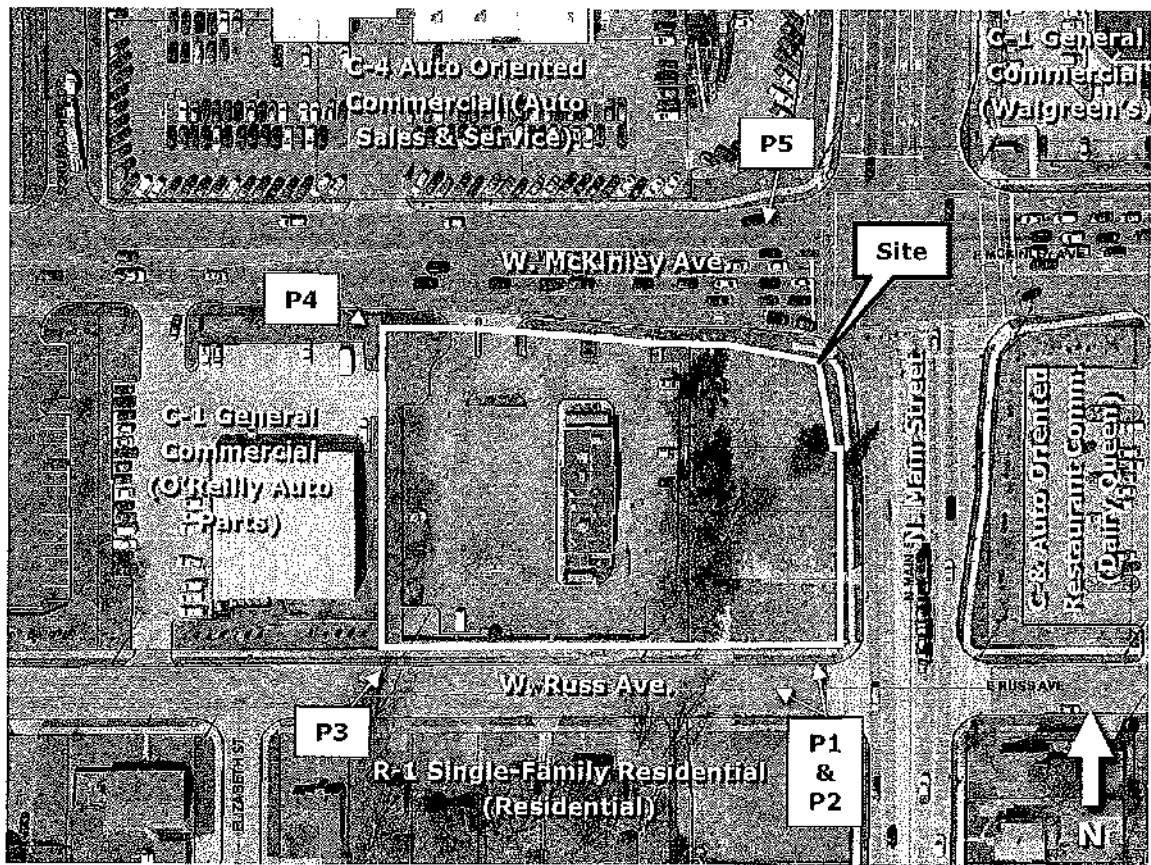
RECOMMENDATION

Staff recommends in **favor** of rezoning Petition 20-23 to rezone approximately 1.09 acres at the southwest corner of W. McKinley Avenue and N. Main Street (119 W. McKinley Avenue and the adjacent four parcels to the east) from C-7 Auto Oriented Restaurant Commercial and R-1 Single Family Residential to the C-10 Filling Station / Car Wash to allow for the construction of a convenience store with gas pumps. This recommendation is based on the following findings of fact:

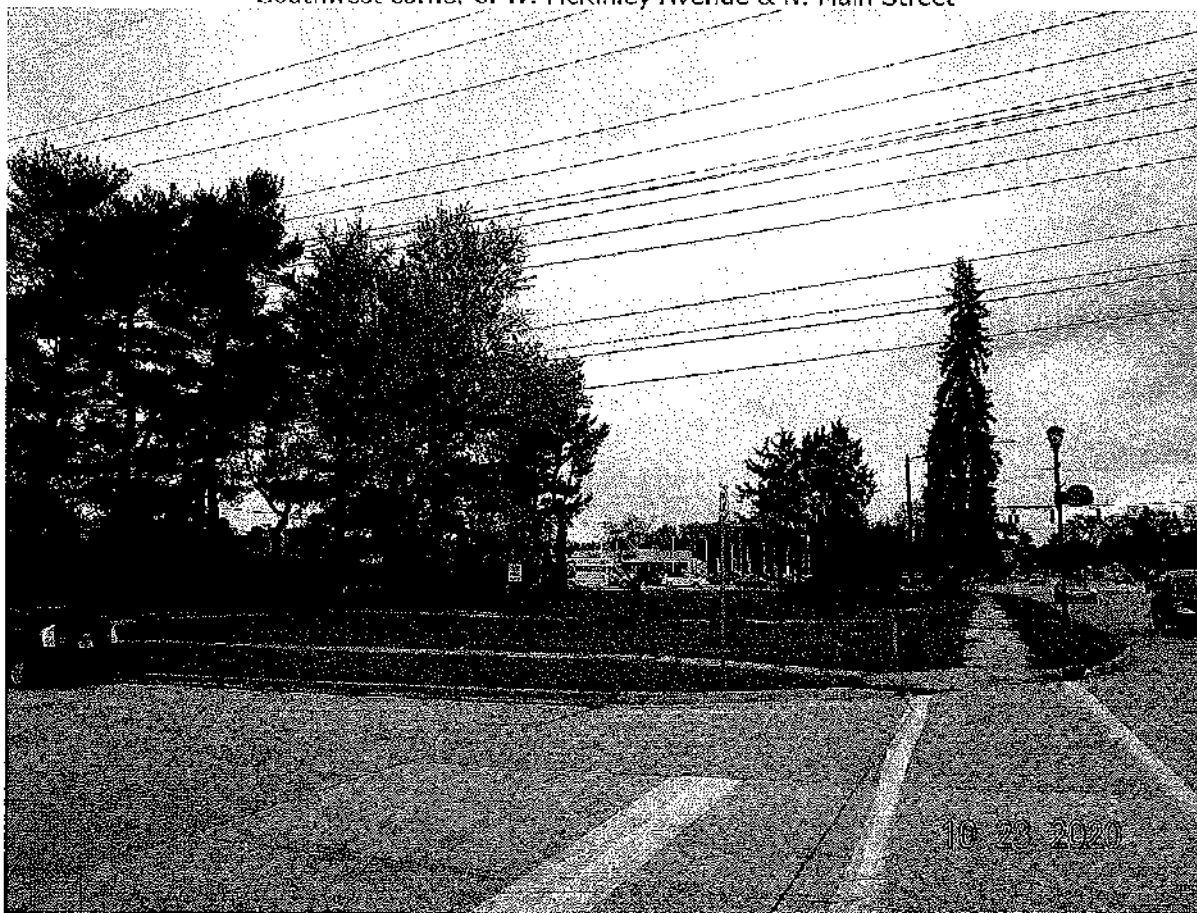
1. Existing Conditions – The subject property consists of a restaurant and four vacant parcels at the southwest corner of W. McKinley Avenue and N. Main Street. These roads are highly travelled corridors providing major north-south and east-west access through the City of Mishawaka and South Bend. Adjacent land uses include an automobile sales and service business and pharmacy to the north, an auto parts retailer to the west, single-family residential houses to the south, and restaurant with drive-thru to the east.
2. Character of Buildings – The character of the buildings in the area are predominantly commercial and single-family residential.
3. The most desirable/highest and best use – Because of the property's location and the prior and existing commercial uses, the most desirable use of the property is commercial. Although single-family residential properties are adjacent to the south across W. Russ Street, the high traffic volumes along W. McKinley Avenue and N. Main Street make long term use of the current residentially zoned properties undesirable for residential purposes. Furthermore, a large portion of the property is currently zoned for commercial use.
4. Conservation of property values – The proposed rezoning should not be injurious to property values in the surrounding area as the existing C-7 Auto Oriented Restaurant Commercial zoning classification permits commercial uses on a majority of the property. Landscaping and screening will be required per the C-10 Filling Station / Car Wash Commercial District to adequately buffer the proposed use from the adjacent residential properties.
5. Comprehensive Plan – The 2000 Mishawaka Comprehensive Plan, created in 1990, guided general commercial development within this property. The proposal is consistent with the Comprehensive Plan.

ATTACHMENTS

Aerial Photograph, Photographs, Petition, Location Map, Preliminary/Conceptual Site Plan



Aerial Photograph
Existing Restaurant (119 W. McKinley Ave.) and Four Adjacent Vacant Parcels
Southwest corner of W. McKinley Avenue & N. Main Street



P1. Looking northerly toward the four vacant parcels from the southeast corner of the site.



P2. Looking northwesterly toward the existing restaurant (screened by fence) from the southeast corner of the site.



P3. Looking northeasterly toward the existing restaurant (screened by fence) from the southwest corner of the site.



P4. Looking southeasterly toward the existing restaurant from the northwest corner of the site.



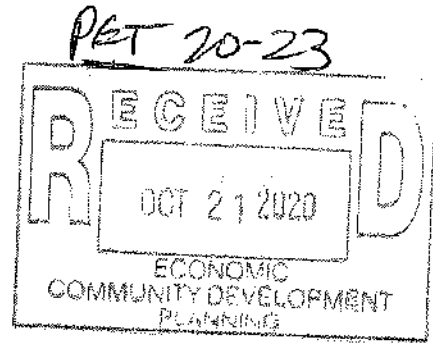
P5. Looking southerly toward the site from the northwest corner of N. Main Street and W. McKinley Avenue.

RECEIVED
DEBORAH S. BLOCK, MMC

OCT 29 2020

CITY CLERK
MISHAWAKA, IN

Date: October 16, 2020



To The: Honorable Members of the
Common Council of the
City of Mishawaka, Indiana

RE: Graber Group LP, Larry & Freda Scheibelhut, Dennis & Karen Culp,
Mary Lou Seltzer and Thomas Scheibelhut,
Petition for Rezoning:

The undersigned, respectfully show that they are the owners of the following described real estate located in the City of Mishawaka, St. Joseph County, Indiana:

A PART OF THE NORTHEAST QUARTER OF SECTION 9, TOWNSHIP 37 NORTH, RANGE 3 EAST, PENN TOWNSHIP, CITY OF MISHAWAKA, ST. JOSEPH COUNTY, INDIANA WHICH IS DESCRIBED AS: LOT # 4 OF THE PLAT OF "MAIN-MCKINLEY SUBDIVISION" AS RECORDED BY DOCUMENT NUMBER 1533244 IN THE RECORDS OF THE ST. JOSEPH COUNTY, INDIANA RECORDER'S OFFICE, LOTS # 10, 11 AND 12 OF THE PLAT OF "SHIVEY'S FIRST SUBDIVISION" AS RECORDED IN PLAT BOOK # 15 ON PAGE # 3 IN THE RECORDS OF SAID RECORDER'S OFFICE, EXCEPTING FROM SAID LOTS # 10, 11 AND 12, THAT PORTION OF SAID LOTS TAKEN FOR RIGHT-OF-WAY FOR MAIN STREET AND A PARCEL OF GROUND DESCRIBED AS: BEGINNING AT THE SOUTHWEST CORNER OF SAID LOT # 10; THENCE NORTH 89°38'38" WEST ALONG THE NORTH RIGHT-OF-WAY LINE OF RUSS STREET FOR A DISTANCE OF 218.24 FEET MORE OR LESS; THENCE NORTH 00°07'31" EAST A DISTANCE OF 225.24 FEET MORE OR LESS TO THE SOUTH RIGHT-OF-WAY LINE OF MC KINLEY HIGHWAY; THENCE ALONG SAID SOUTH LINE FOR THE NEXT FOUR (4) COURSES, SOUTH 87°22'28" EAST, A DISTANCE OF 44.73 FEET MORE OR LESS AND NORTH 89°41'28" EAST, A DISTANCE OF 20.00 FEET MORE OR LESS AND SOUTH 85°28'21" EAST, A DISTANCE OF 130.47 FEET MORE OR LESS AND SOUTH 89°41'28" EAST, A DISTANCE OF 22.15 FEET MORE OR LESS TO THE NORTHWEST CORNER OF SAID LOT # 4.

CONTAINING 1.09 ACRES MORE OR LESS.

SUBJECT TO ALL LEGAL RIGHT-OF-WAYS, AND EASEMENTS, AND RESTRICTIONS OF RECORD.

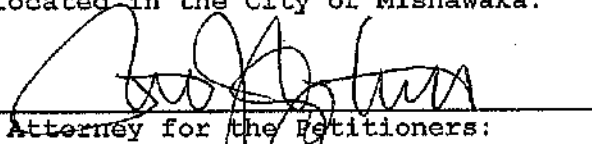
Also, commonly known as 119 West Mc Kinley Highway, 2219 North Main Street, 2205 North Main Street, Vacant land adjacent to and North of 2205 North Main Street and 2201 North Main Street, Mishawaka, Indiana 46545.

The above described parcels of land are presently zoned "C-7" Commercial District and "R-1" Residential District.

The Petitioners desire said real estate, to be rezoned to the "C-10" Commercial District classification. The purpose for the rezoning is to allow for the real estate to be purchased by an interested party who desires to build a Convenience Store with Gas Pumps on the site.

Wherefore, the Petitioners pray and respectfully request that the Common Council of the City of Mishawaka refer this matter to the Mishawaka City Plan Commission and that after hearing, an appropriate

ordinance be enacted rezoning the above described parcel of real estate located in the City of Mishawaka.



Attorney for the Petitioners:

Mr. Peter Agostino
131 South Taylor Street
South Bend, IN 46601
574-288-1510

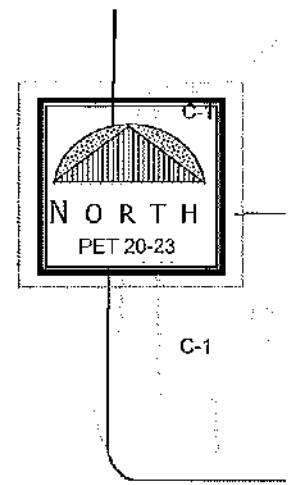
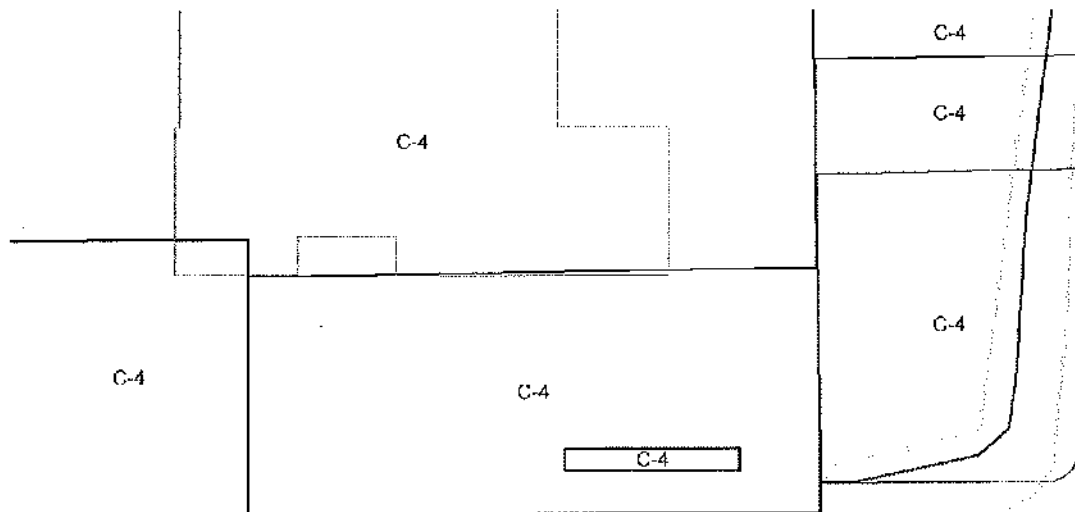
Contact person for site plan:
Danch, Harner & Associates, Inc.
1643 Commerce Drive
South Bend, Indiana 46628
574) 234-4003

LEGAL DESCRIPTION

A PART OF THE NORTHEAST QUARTER OF SECTION 9, TOWNSHIP 37 NORTH, RANGE 3 EAST, PENN TOWNSHIP, CITY OF MISHAWAKA, ST. JOSEPH COUNTY, INDIANA WHICH IS DESCRIBED AS: LOT # 4 OF THE PLAT OF "MAIN-MCKINLEY SUBDIVISION" AS RECORDED BY DOCUMENT NUMBER 1533244 IN THE RECORDS OF THE ST. JOSEPH COUNTY, INDIANA RECORDER'S OFFICE, LOTS # 10, 11 AND 12 OF THE PLAT OF "SHIVEY'S FIRST SUBDIVISION" AS RECORDED IN PLAT BOOK # 15 ON PAGE # 3 IN THE RECORDS OF SAID RECORDER'S OFFICE, EXCEPTING FROM SAID LOTS #10, 11 AND 12, THAT PORTION OF SAID LOTS TAKEN FOR RIGHT-OF-WAY FOR MAIN STREET AND A PARCEL OF GROUND DESCRIBED AS: BEGINNING AT THE SOUTHWEST CORNER OF SAID LOT # 10; THENCE NORTH 89°38'38" WEST ALONG THE NORTH RIGHT-OF-WAY LINE OF RUSS STREET FOR A DISTANCE OF 218.24 FEET MORE OR LESS; THENCE NORTH 00°07'31" EAST A DISTANCE OF 225.24 FEET MORE OR LESS TO THE SOUTH RIGHT-OF-WAY LINE OF MC KINLEY HIGHWAY; THENCE ALONG SAID SOUTH LINE FOR THE NEXT FOUR (4) COURSES, SOUTH 87°22'28" EAST, A DISTANCE OF 44.73 FEET MORE OR LESS AND NORTH 89°41'28" EAST, A DISTANCE OF 20.00 FEET MORE OR LESS AND SOUTH 85°28'21" EAST, A DISTANCE OF 130.47 FEET MORE OR LESS AND SOUTH 89°41'28" EAST, A DISTANCE OF 22.15 FEET MORE OR LESS TO THE NORTHWEST CORNER OF SAID LOT # 4.

CONTAINING 1.09 ACRES MORE OR LESS.

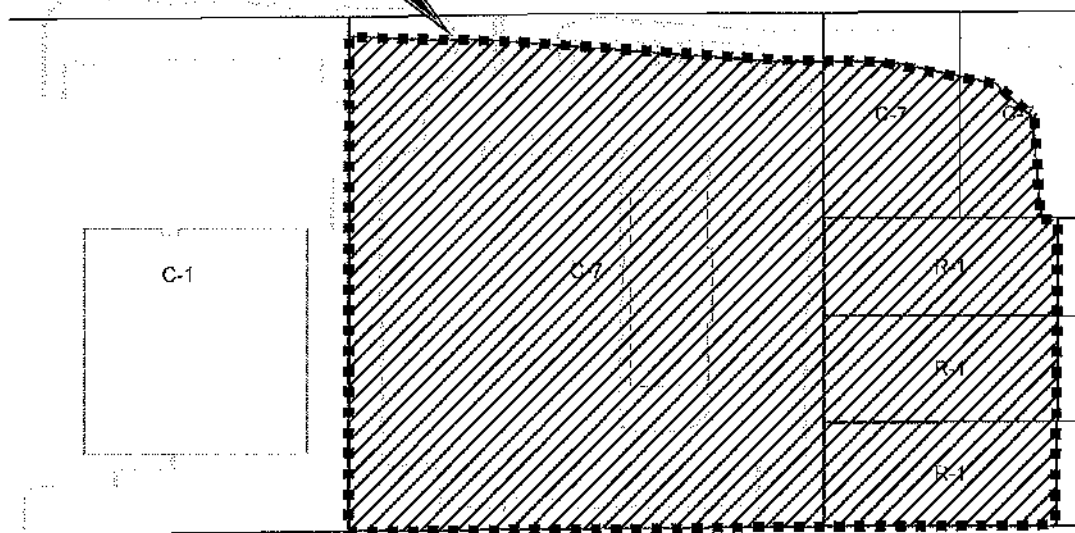
SUBJECT TO ALL LEGAL RIGHT-OF-WAYS, AND EASEMENTS, AND RESTRICTIONS OF RECORD.



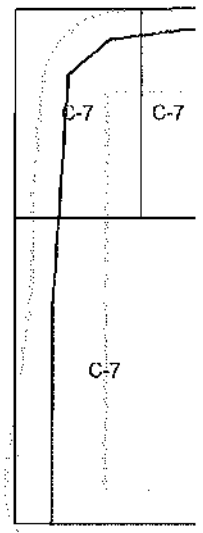
PET 20-23

W MCKINLEY AVE

E MCKINLEY AVE

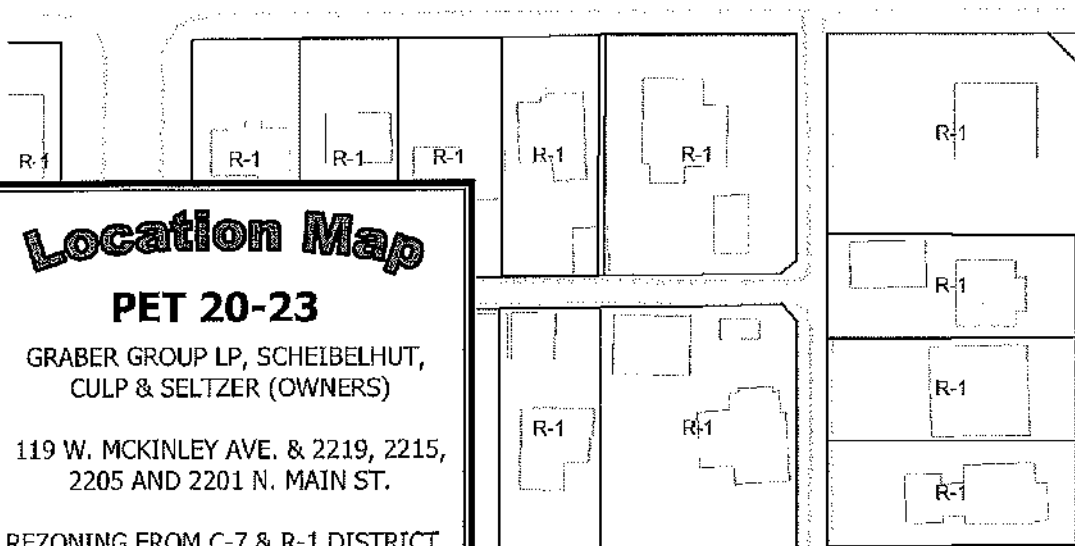


N MAIN ST



W RUSS AVE

E RUSS AVE



Location Map

PET 20-23

GRABER GROUP LP, SCHEIBELHUT,
CULP & SELTZER (OWNERS)

119 W. MCKINLEY AVE. & 2219, 2215,
2205 AND 2201 N. MAIN ST.

REZONING FROM C-7 & R-1 DISTRICT
TO THE C-10 DISTRICT TO ALLOW A
CONVENIENCE STORE WITH GAS PUMPS

PRELIMINARY SITE PLAN

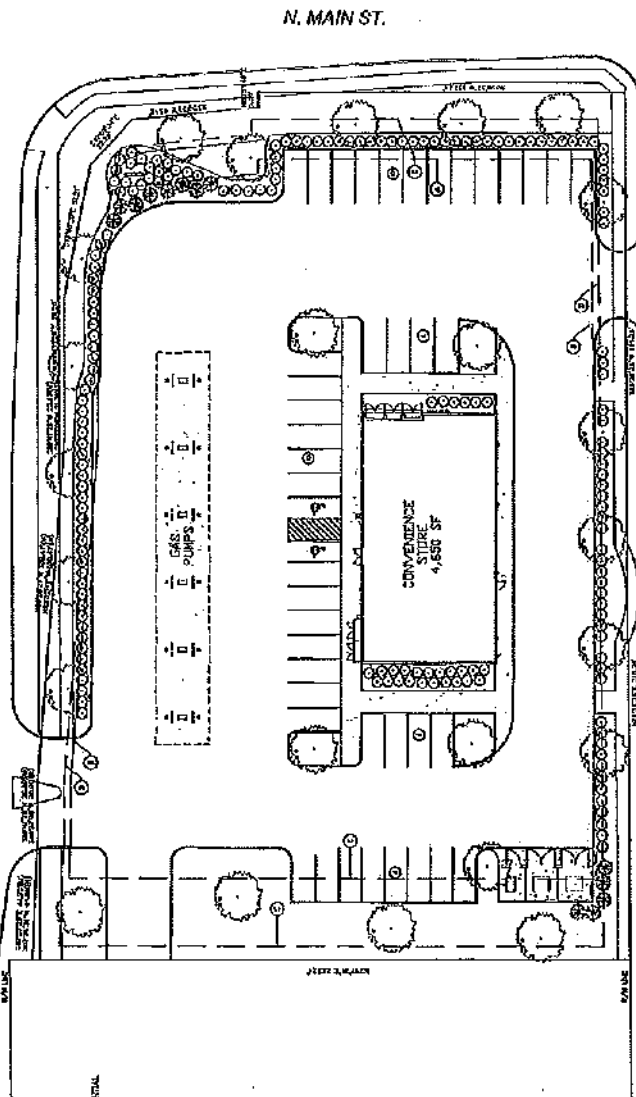
[illegible]

- 1) ADDRESS OF RANCHER _____ LOT 2 ACRES
TOWNSHIP 25 NORTH, RANGE 12 EAST, SECTION 36, T. 25 N. R. 12 E. S. 36
COUNTY OF LINCOLN, NEBRASKA
- 2) ADDRESS OF RANCHER _____ LOT 2 ACRES
TOWNSHIP 25 NORTH, RANGE 12 EAST, SECTION 36, T. 25 N. R. 12 E. S. 36
COUNTY OF LINCOLN, NEBRASKA
- 3) ADDRESS OF RANCHER _____ LOT 2 ACRES
TOWNSHIP 25 NORTH, RANGE 12 EAST, SECTION 36, T. 25 N. R. 12 E. S. 36
COUNTY OF LINCOLN, NEBRASKA
- 4) ADDRESS OF RANCHER _____ LOT 2 ACRES
TOWNSHIP 25 NORTH, RANGE 12 EAST, SECTION 36, T. 25 N. R. 12 E. S. 36
COUNTY OF LINCOLN, NEBRASKA
- 5) ADDRESS OF RANCHER _____ LOT 2 ACRES
TOWNSHIP 25 NORTH, RANGE 12 EAST, SECTION 36, T. 25 N. R. 12 E. S. 36
COUNTY OF LINCOLN, NEBRASKA

1) TO REMOVE FROM C-2 COMMERCIAL DISTRICT AND 2-1: SINGLE FAMILY RESIDENTIAL TO C-10 COMMERCIAL DISTRICT. ALL IN ONE A CONSIDERABLE MORE VERY CASE BEING.

external market

(A) 23-FT FRONT-YARD SETBACK
 (B) 12.3-FT EXTERIOR SIDE-YARD SETBACK
 (C) 30-FT REAR-YARD SETBACK
 (D) 10-FT PARKING SETBACK
 (E) 5-FT PARKING SETBACK



E. RUSS ST.

157167 - 2010-02-19 14:54

[illegible]

STAKE 1' = 20'

REVISIONS

DATE	12-10-2011
TIME	12:30

HENRY THOMAS RILEY
 (DOB - 1-1-23)
 6020 W. 130TH BLVD
 ST. LOUIS, MISSOURI 63141
 DR - DIRECTOR & SPOUSE - SCOTT

1st Reading
2nd Reading
Passed
Failed
Continued To

PROPOSED ORDINANCE NO. 2020-39

ORDINANCE NO. _____

**RECEIVED
DEBORAH S. BLOCK, MMC**

DEC 03 2020

**CITY CLERK
MISHAWAKA, IN**

An Ordinance of the City of Mishawaka authorizing the issuance of waterworks revenue bonds for the purpose of providing funds to pay the cost of certain additions, extensions and improvements to the municipal waterworks of said City, providing for the safeguarding of the interests of the owners of said bonds, other matters connected therewith, including the issuance of notes in anticipation of bonds, and repealing ordinances inconsistent herewith

WHEREAS, the Common Council ("Common Council") of the City of Mishawaka, Indiana ("City") has heretofore established, constructed and financed a municipal waterworks and now owns and operates the municipal waterworks in accordance with the provisions of Title 8, Article 1.5 of the Indiana Code, as in effect on the date of delivery of the bonds herein authorized ("Act"); and

WHEREAS, the Common Council finds that certain additions, improvements and extensions to said works are necessary; and that plans, specifications and estimates have been prepared and filed by the engineers employed by the City for the construction of said additions, improvements and extensions, as more fully described on Exhibit A attached hereto and made a part hereof ("Project"), which plans and specifications have been or will be approved by the Common Council and by all governmental authorities having jurisdiction, particularly the Indiana Department of Environmental Management ("Department"); and

WHEREAS, the City will advertise for and receive bids for the Project, which bids will be subject to the City's determination to construct the Project and subject to the City's obtaining funds to pay for the Project; that on the basis of said engineer's estimates and construction bids, the maximum cost of the Project, including incidental expenses, is in an amount not to exceed \$51,600,000; and

WHEREAS, the City finds that there are no funds on hand available to apply to the costs of the Project and that the costs of the Project are hereby authorized to be financed by the issuance of waterworks revenue bonds, in one or more series, and, if necessary, bond anticipation notes ("BANs") in an aggregate principal amount not to exceed \$51,600,000; and

WHEREAS, the Common Council finds that there are certain outstanding bonds of the waterworks designated "Waterworks Refunding Revenue Bonds of 2007," dated May 23, 2007 ("2007 Bonds"), originally issued in the amount of \$4,475,000 and now outstanding in the amount of \$220,000, and maturing semiannually over a period ending July 1, 2020, which 2007 Bonds constitute a first charge upon the Net Revenues (as hereinafter defined) of the waterworks; and

WHEREAS, the Common Council finds that there are certain outstanding bonds of the waterworks designated "Waterworks Refunding Revenue Bonds of 2013," dated August 20, 2013 ("2013 Bonds"), originally issued in the amount of \$12,710,000 and now outstanding in the amount of \$3,785,000, and maturing semiannually over a period ending July 1, 2022, which 2013 Bonds constitute a first charge upon the Net Revenues of the waterworks, on a parity with the 2007 Bonds; and

WHEREAS, the Common Council finds that there are certain outstanding bonds of the waterworks designated "Waterworks Revenue Bonds of 2018," dated October 29, 2018 ("2018 Bonds"), originally issued in the amount of \$13,000,000 and now outstanding in the amount of \$13,000,000, and maturing semiannually over a period ending July 1, 2039, which 2018 Bonds constitute a first charge upon the Net Revenues of the waterworks, on a parity with the 2007 Bonds and the 2013 Bonds; and

WHEREAS, the 2007 Bonds, the 2013 Bonds and the 2018 Bonds are hereinafter collectively referred to as the "Outstanding Bonds;" and

WHEREAS, the Common Council finds that the City's Board of Public Works is expected to adopt a Resolution (the "Pledge Resolution"), which pursuant to the Pledge Resolution the City's Board of Public Works will pledge funds on deposit in the Improvement Fund (as defined herein) to the payment of certain indebtedness of the City's electric utility (the "Electric Utility Pledge");

WHEREAS, the Common Council finds that the Electric Utility Pledge shall be junior and subordinate to the pledge of Net Revenues towards the Bonds, the Outstanding Bonds and any Parity Bonds (as defined herein);

WHEREAS, the terms and conditions of the ordinances authorizing the Outstanding Bonds provides that additional revenue bonds may be issued on a parity with the Outstanding Bonds provided certain tests are met, and the City finds that the finances of said waterworks are such as will enable meeting the conditions for the issuance of additional parity bonds and that, accordingly, the additional revenue bonds to be issued hereunder shall rank on a parity with the Outstanding Bonds; and

WHEREAS, the bonds to be issued pursuant to this ordinance will constitute a first charge against the Net Revenues of the waterworks, on a parity with the Outstanding Bonds, and are to be issued subject to the provisions of the laws of the Act, and the terms and restrictions of this ordinance; and

WHEREAS, the City desires to authorize the issuance of bond anticipation notes ("BANs") hereunder, in one or more series, if necessary, payable from the proceeds of waterworks revenue bonds issued hereunder and to authorize the refunding of the BANs, if issued; and

WHEREAS, the City may enter into a Financial Assistance Agreement with the Indiana Finance Authority ("Authority") as part of its drinking water loan program ("DWSRF Program")

established and existing pursuant to IC 5-1.2-1 through IC 5-1.2-4 and IC 5-1.2-10 ("Financial Assistance Agreement") if the bonds or BANs are sold to the Authority through its DWSRF Program; and

WHEREAS, the Common Council finds that the 2018 Bonds were sold to the Authority through its DWSRF Program and that a form of Financial Assistance Agreement was executed and delivered by the City for the 2018 Bonds; and

WHEREAS, the City may accept other forms of financial assistance, as and if available from the DWSRF Program; and

WHEREAS, the City reasonably expects to reimburse certain preliminary costs of the Project with proceeds of debt to be incurred by the City in an amount not to exceed \$51,600,000; and

WHEREAS, the City's waterworks is not subject to the jurisdiction of the Indiana Utility Regulatory Commission; and

WHEREAS, the Common Council has been advised that it may be cost efficient to purchase municipal bond insurance and/or a debt service reserve surety for the bonds authorized herein; and

WHEREAS, the Common Council now finds that all conditions precedent to the adoption of an ordinance authorizing the issuance of revenue bonds and BANs have been complied with in accordance with the provisions of the Act;

NOW, THEREFORE, BE IT ORDAINED BY THE COMMON COUNCIL OF THE CITY OF MISHAWAKA, INDIANA, THAT:

Section 1. Authorization of Project; Reimbursement. The City shall proceed with the construction of the Project in accordance with the cost estimates and the plans and specifications

heretofore prepared and filed by the consulting engineers employed by the City, which plans and specifications are hereby adopted and approved, and by reference made a part of this ordinance as fully as if the same were attached hereto and incorporated herein. Two copies of the plans and specifications and the cost estimates are on file in the office of the Clerk of the City and open for public inspection pursuant to IC 36-1-5-4. The estimated cost of construction of the Project will not exceed the sum of \$51,600,000, plus investment earnings on the bond and BAN proceeds. The terms "waterworks," "waterworks system," "works," "system," and other like terms where used in this ordinance shall be construed to mean and include the Drinking Water System, as defined in the Financial Assistance Agreement, and includes the existing waterworks system and all real estate and equipment used in connection therewith and appurtenances thereto, and all extensions, additions, and improvements thereto and replacements thereof now or at any time hereafter constructed or acquired as well as the drainage of storm and surface water to relieve the waterworks system of such water. The Project shall be constructed in accordance with the plans and specifications heretofore mentioned, which plans and specifications are hereby approved. The Project shall be constructed and the bonds herein authorized shall be issued pursuant to and in accordance with the Act.

The City hereby declares its official intent to complete the Project; to reimburse certain costs of completing the Project with proceeds of debt to be incurred by the City, and to issue debt not exceeding \$51,600,000 in aggregate principal amount for purposes of paying and reimbursing costs of the Project.

Section 2. Issuance of BANs and Bonds. (a) The City shall issue, if necessary, its BANs for the purpose of procuring interim financing to apply to the cost of the Project. The City shall issue its BANs, in one or more series, in an amount not to exceed Fifty-one Million Six

Hundred Thousand Dollars (\$51,600,000) to be designated "Waterworks Bond Anticipation Notes of ____" (to be completed with the year in which issued and appropriate series designation, if any). The BANs shall be numbered consecutively from 1 upward, shall be sold at a price not less than 99.5% of their par value or at a price not less than 100% of their par value if sold to the Authority as part of the DWSRF Program, shall be in multiples of One Dollar (\$1) if sold to the Authority as part of its DWSRF Program or in denominations of One Thousand Dollars (\$1,000) or integral multiples thereof if sold to another purchaser, as set forth in the hereinafter defined Purchase Agreement for the BANs, shall be dated as of the date of delivery thereof, and shall bear interest at a rate not to exceed four percent (4%) per annum (the exact rate or rates to be determined through negotiation) payable either (i) at maturity or upon redemption, or (ii) semiannually on January 1 and July 1 in each year, beginning with the first January 1 or the first July 1 which is at least six full months following delivery of the BANs, and semiannually thereafter. Interest on the BANs is payable from (i) Net Revenues, subject to the prior payment of the Outstanding Bonds any bonds issued under this ordinance, or (ii) in the case of interest at maturity or upon prepayment, from proceeds of the bonds. The BANs will mature no later than five (5) years after their date of delivery. The BANs are subject to renewal or extension at an interest rate or rates not to exceed four percent (4%) per annum (the exact rate or rates to be negotiated). The term of the BANs and all renewal BANs may not exceed five years from the date of delivery of the initial BANs. The BANs shall be registered in the name of the purchasers thereof. Payment on the BANs may be made in the installments.

The BANs shall be issued pursuant to IC 5-1.5-8-6.1 if sold to the Indiana Bond Bank, pursuant to IC 5-1.2-1 through IC 5-1.2-4 and IC 5-1.2-10 if sold to the Authority, or pursuant to IC 5-1-14-5 if sold to a financial institution or any other purchaser. The principal of and interest

on the BANs shall be payable from the issuance of revenue bonds pursuant to and in the manner prescribed by the Act. Interest on the BANs is also payable from Net Revenues, subject to the prior payment of the Outstanding Bonds any bonds issued under this ordinance, provided, however that if any interest to be paid from Net Revenues on the BANs is to occur on a date other than January 1 or July 1, by reason of maturity or redemption, such payment may only occur if all of the principal and interest on any bonds issued under this ordinance and all Outstanding Bonds of the waterworks of the City due on the next succeeding principal and interest payment dates is fully accumulated in the Bond and Interest Account of the Waterworks Sinking Fund continued by this ordinance. The revenue bonds will be payable solely out of and constitute a first charge against the Net Revenues (herein defined as gross revenues, inclusive of System Development Charges (as hereinafter defined), after deduction only for the payment of the reasonable expenses of operation, repair and maintenance, excluding transfers for payment in lieu of property taxes ("PILOTs")) of the waterworks of the City, on a parity with the Outstanding Bonds and senior to the Electric Utility Pledge. For purposes of this ordinance, "System Development Charges" shall mean the proceeds and balances from any non-recurring charges such as tap fees, subsequent connector fees, capacity or contribution fees, and other similar one-time charges that are available for deposit under this ordinance.

The City shall issue its waterworks revenue bonds, in one or more series, in an aggregate principal amount not to exceed \$51,600,000 to be designated "Waterworks Revenue Bonds of _____" (to be completed with the year in which issued and series designation, if any) ("Bonds") for the purpose of procuring funds to be applied on the cost of the Project, the payment of costs of issuance, refunding the BANs, if issued, and all other costs related to the Project, including a premiums for municipal bond insurance and/or a debt service reserve surety. Each series of Bonds

shall be sold at a price of not less than par value if sold to the Authority as part of its DWSRF Program, or not less than 99% of their par value if sold to any other purchaser, and shall be issued in the denomination of One Dollar (\$1) or any multiple thereof if sold to the Authority through its DWSRF Program, or in denominations of Five Thousand Dollars (\$5,000) each or integral multiples thereof if sold to any other purchaser, numbered consecutively from 1 upward, dated as of their date of delivery, and shall bear interest at a rate or rates not exceeding five percent (5%) per annum (the exact rate or rates to be determined by bidding or through negotiation), payable semiannually on January 1 and July 1 in each year, beginning on the first January 1 or the first July 1 following the date of delivery of the Bonds, as determined by the Controller with the advice of the City's financial advisor. Principal shall be payable in lawful money of the United States of America, at the principal office of the Paying Agent (as hereinafter defined) and the Bonds shall mature semiannually on January 1 and July 1 of each year, or shall be subject to mandatory sinking fund redemption if term bonds are issued, on January 1 and July 1 of each year over a period ending no later than July 1, 2046 and in such amounts that will either: (i) produce as level annual debt service as practicable taking into account the annual debt service on the Outstanding Bonds and all Bonds issued hereunder; or (ii) if the Bonds are sold to the Authority as part of its DWSRF Program, allow the City to meet the coverage and/or amortization requirements of the DWSRF Program. If the Bonds are sold to the Authority as part of its DWSRF Program, such debt service schedule shall be finalized and set forth in the Financial Assistance Agreement.

All or a portion of each series of the Bonds may be issued as one or more term bonds, upon election of the purchaser thereof. Such term bonds shall have a stated maturity or maturities consistent with the maturity schedule determined in accordance with the preceding paragraph, on the dates as determined by the purchaser thereof, but in no event later than the last serial maturity

date of the Bonds as determined in the preceding paragraph. The term bonds shall be subject to mandatory sinking fund redemption and final payment(s) at maturity at 100% of the principal amount thereof, plus accrued interest to the redemption date, on principal payment dates which are hereinafter determined in accordance with the preceding paragraph.

Each series of Bonds issued hereunder shall rank on a parity for all purposes under this ordinance, including the pledge of Net Revenues.

Interest on the Bonds and BANs shall be calculated according to a 360-day calendar year containing twelve 30-day months.

Section 3. Registrar and Paying Agent; Book-entry Provisions. (a) The Controller is hereby authorized to contract with a qualified financial institution to serve as Registrar and Paying Agent for the Bonds ("Registrar" or "Paying Agent"). The Registrar is hereby charged with the responsibility of authenticating the Bonds. The Controller is hereby authorized to enter into such agreements or understandings with the Registrar as will enable the institution to perform the services required of a registrar and paying agent. The Controller is further authorized to pay such fees as the Registrar may charge for the services it provides as Registrar and Paying Agent and such fees may be paid from the Waterworks Sinking Fund established to pay the principal of and interest on the Bonds as fiscal agency charges.

As to the BANs and as to the Bonds, if the purchaser does not object to such designation, the Controller may serve as Registrar and Paying Agent and would be hereby charged with the performance of and all duties of and responsibilities of Registrar and Paying Agent.

(b) If the Bonds or BANs are sold to the Authority through its DWSRF Program, the principal of and interest thereon shall be paid by wire transfer to such financial institution if and as directed by the Authority on the due date of such payment or, if such due date is a day when

financial institutions are not open for business, on the business day immediately after such due date. So long as the Authority, as part of its DWSRF Program, is the owner of the Bonds or BANs, such Bonds and BANs shall be presented for payment as directed by the Authority.

If such Bonds are not sold to the Authority as part of its DWSRF Program or if wire transfer payment is not required, the principal of the Bonds and the principal and interest on the BANs shall be payable at the principal corporate trust office of the Paying Agent. All payments of interest on the Bonds shall be paid by check mailed to the registered owners thereof, as of the fifteenth day of the month preceding each interest payment date ("Record Date"), at the addresses as they appear on the registration books kept by the Registrar or at such other address as is provided to the Paying Agent in writing by such registered owner on or before such Record Date. If payment of principal or interest is made to a depository, payment shall be made by wire transfer on the payment date in same-day funds. If the payment date occurs on a date when financial institutions are not open for business, the wire transfer shall be made on the next succeeding business day. The Paying Agent shall be instructed to wire transfer payments by 1:00 p.m. (New York City time) so such payments are received at the depository by 2:30 p.m. (New York City time).

All payments on the Bonds and BANs shall be made in any coin or currency of the United States of America, which on the date of such payment, shall be legal tender for the payment of public and private debts.

(c) Each Bond shall be transferable or exchangeable only upon the books of the City kept for that purpose at the principal corporate trust office of the Registrar by the registered owner in person, or by its attorney duly authorized in writing, upon surrender of such Bond together with a written instrument of transfer or exchange satisfactory to the Registrar duly executed by the registered owner, or its attorney duly authorized in writing, and thereupon a new fully registered

Bond or Bonds in an authorized aggregate principal amount and of the same maturity, shall be executed and delivered in the name of the transferee or transferees or the registered owner, as the case may be, in exchange therefor. The costs of such transfer or exchange shall be borne by the City except for any tax or governmental charge required to be paid with respect to the transfer or exchange, which taxes or governmental charges are payable by the person requesting such transfer or exchange. The City, Registrar and Paying Agent for the Bonds may treat and consider the person in whose name such Bonds are registered as the absolute owner thereof for all purposes including for the purpose of receiving payment of, or on account of, the principal thereof and interest due thereon.

(d) The Registrar and Paying Agent may at any time resign as Registrar and Paying Agent upon giving 30 days' notice in writing to the City and by first class mail to each registered owner of the Bonds then outstanding, and such resignation will take effect at the end of such 30 day period or upon the earlier appointment of a successor registrar and paying agent by the City. Any such notice to the City may be served personally or sent by registered mail. The Registrar and Paying Agent may be removed at any time as Registrar and Paying Agent by the City, in which event the City may appoint a successor registrar and paying agent. The City shall notify each registered owner of the Bonds then outstanding by first class mail of the removal of the Registrar and Paying Agent. Notices to the registered owners of the Bonds shall be deemed to be given when mailed by first class mail to the addresses of such registered owners as they appear on the registration books kept by the Registrar.

Upon the appointment of any successor registrar and paying agent by the City, the Controller is authorized and directed to enter into such agreements and understandings with such successor registrar and paying agent as will enable the institution to perform the services required

of a registrar and paying agent for the Bonds. The Controller is further authorized to pay such fees as the successor registrar and paying agent may charge for the services it provides as registrar and paying agent and such fees may be paid from the Waterworks Sinking Fund continued in Section 15 hereof. Any predecessor registrar and paying agent shall deliver all of the Bonds and any cash or investments in its possession with respect thereto, together with the registration books, to the successor registrar and paying agent.

(e) Interest on the Bonds sold to the Authority as part of its DWSRF Program shall be payable from the date or dates of payment made by the Authority as part of its purchase of the Bonds pursuant to the Financial Assistance Agreement. Interest on all other Bonds shall be payable from the interest payment date to which interest has been paid next preceding the authentication date of the Bonds unless the Bonds are authenticated after the Record Date and on or before such interest payment date in which case they shall bear interest from such interest payment date, or unless the Bonds are authenticated on or before the Record Date preceding the first interest payment date, in which case they shall bear interest from the original date until the principal shall be fully paid. Notwithstanding anything to the contrary herein, the Bonds shall not be required to be presented or surrendered to receive payment in connection with any mandatory sinking fund redemption until the final maturity date of the Bonds or earlier payment in full of the Bonds.

(f) The City has determined that it may be beneficial to the City to have the Bonds held by a central depository system pursuant to an agreement between the City and The Depository Trust Company, New York, New York ("Depository Trust Company") and have transfers of the Bonds effected by book-entry on the books of the central depository system ("Book Entry System"). The Bonds may be initially issued in the form of a separate single authenticated fully

registered Bond for the aggregate principal amount of each separate maturity of the Bonds. In such case, upon initial issuance, the ownership of such Bonds shall be registered in the register kept by the Registrar in the name of CEDE & CO., as nominee of the Depository Trust Company.

With respect to the Bonds registered in the register kept by the Registrar in the name of CEDE & CO., as nominee of the Depository Trust Company, the City and the Paying Agent shall have no responsibility or obligation to any other holders or owners (including any beneficial owner ("Beneficial Owner")) of the Bonds with respect to (i) the accuracy of the records of the Depository Trust Company, CEDE & CO., or any Beneficial Owner with respect to ownership questions, (ii) the delivery to any bondholder (including any Beneficial Owner) or any other person, other than the Depository Trust Company, of any notice with respect to the Bonds including any notice of redemption, or (iii) the payment to any bondholder (including any Beneficial Owner) or any other person, other than the Depository Trust Company, of any amount with respect to the principal of, or premium, if any, or interest on the Bonds except as otherwise provided herein.

No person other than the Depository Trust Company shall receive an authenticated Bond evidencing an obligation of the City to make payments of the principal of and premium, if any, and interest on the Bonds pursuant to this ordinance. The City and the Registrar and Paying Agent may treat as and deem the Depository Trust Company or CEDE & CO. to be the absolute bondholder of each of the Bonds for the purpose of (i) payment of the principal of and premium, if any, and interest on such Bonds; (ii) giving notices of redemption and other notices permitted to be given to bondholders with respect to such Bonds; (iii) registering transfers with respect to such Bonds; (iv) obtaining any consent or other action required or permitted to be taken of or by bondholders; (v) voting; and (vi) for all other purposes whatsoever. The Paying Agent shall pay all principal of and premium, if any, and interest on the Bonds only to or upon the order of the

Depository Trust Company, and all such payments shall be valid and effective fully to satisfy and discharge the City's and the Paying Agent's obligations with respect to principal of and premium, if any, and interest on the Bonds to the extent of the sum or sums so paid. Upon delivery by the Depository Trust Company to the City of written notice to the effect that the Depository Trust Company has determined to substitute a new nominee in place of CEDE & CO., and subject to the provisions herein with respect to consents, the words "CEDE & CO." in this ordinance shall refer to such new nominee of the Depository Trust Company. Notwithstanding any other provision hereof to the contrary, so long as any Bond is registered in the name of CEDE & CO., as nominee of the Depository Trust Company, all payments with respect to the principal of and premium, if any, and interest on such Bonds and all notices with respect to such Bonds shall be made and given, respectively, to the Depository Trust Company as provided in a representation letter from the City to the Depository Trust Company.

Upon receipt by the City of written notice from the Depository Trust Company to the effect that the Depository Trust Company is unable or unwilling to discharge its responsibilities and no substitute depository willing to undertake the functions of the Depository Trust Company hereunder can be found which is willing and able to undertake such functions upon reasonable and customary terms, then the Bonds shall no longer be restricted to being registered in the register of the City kept by the Registrar in the name of CEDE & CO., as nominee of the Depository Trust Company, but may be registered in whatever name or names the bondholders transferring or exchanging the Bonds shall designate, in accordance with the provisions of this ordinance.

If the City determines that it is in the best interest of the bondholders that they be able to obtain certificates for the fully registered Bonds, the City may notify the Depository Trust Company and the Registrar, whereupon the Depository Trust Company will notify the Beneficial

Owners of the availability through the Depository Trust Company of certificates for the Bonds. In such event, the Registrar shall prepare, authenticate, transfer and exchange certificates for the Bonds as requested by the Depository Trust Company and any Beneficial Owners in appropriate amounts, and whenever the Depository Trust Company requests the City and the Registrar to do so, the Registrar and the City will cooperate with the Depository Trust Company by taking appropriate action after reasonable notice (i) to make available one or more separate certificates evidencing the fully registered Bonds of any Beneficial Owner's Depository Trust Company account or (ii) to arrange for another securities depository to maintain custody of certificates for and evidencing the Bonds.

If the Bonds shall no longer be restricted to being registered in the name of the Depository Trust Company, the Registrar shall cause the Bonds to be printed in blank in such number as the Registrar shall determine to be necessary or customary; provided, however, that the Registrar shall not be required to have such Bonds printed until it shall have received from the City indemnification for all costs and expenses associated with such printing.

In connection with any notice or other communication to be provided to bondholders by the City or the Registrar with respect to any consent or other action to be taken by bondholders, the City or the Registrar, as the case may be, shall establish a record date for such consent or other action and give the Depository Trust Company notice of such record date not less than fifteen (15) calendar days in advance of such record date to the extent possible.

So long as the Bonds are registered in the name of the Depository Trust Company or CEDE & CO. or any substitute nominee, the City and the Registrar and Paying Agent shall be entitled to request and to rely upon a certificate or other written representation from the Beneficial Owners of the Bonds or from the Depository Trust Company on behalf of such Beneficial Owners stating

the amount of their respective beneficial ownership interests in the Bonds and setting forth the consent, advice, direction, demand or vote of the Beneficial Owners as of a record date selected by the Registrar and the Depository Trust Company, to the same extent as if such consent, advice, direction, demand or vote were made by the bondholders for purposes of this ordinance and the City and the Registrar and Paying Agent shall for such purposes treat the Beneficial Owners as the bondholders. Along with any such certificate or representation, the Registrar may request the Depository Trust Company to deliver, or cause to be delivered, to the Registrar a list of all Beneficial Owners of the Bonds, together with the dollar amount of each Beneficial Owner's interest in the Bonds and the current addresses of such Beneficial Owners.

The BANs may also be issued in book-entry form and in that case all of the provisions set forth in this Section 3 shall apply.

Section 4. Redemption of Bonds and BANs. (a) The BANs are prepayable by the City, in whole or in part, on any date after 180 days of issuance, upon 30 days' notice to the owner of the BANs, without premium.

(b) For any Bonds sold to the Authority as part of its DWSRF Program, such Bonds are redeemable at the option of the City, but no sooner than ten (10) years after their date of delivery, or any date thereafter, on sixty (60) days' notice, in whole or in part, in inverse order of maturity, and by lot within a maturity, at face value together with a premium no greater than 2%, plus accrued interest to the date fixed for redemption; provided, however, if the Bonds are sold to the DWSRF Program and registered in the name of the Authority, the Bonds shall not be redeemable at the option of the City unless and until consented to by the Authority. The exact redemption dates and premiums shall be established by the Controller, with the advice of the City's financial advisor, prior to the sale of the Bonds.

(c) For any Bonds not sold to the Authority as part of its DWSRF Program, such Bonds are redeemable at the option of the City, but no earlier than eight (8) years after their date of delivery and on any date thereafter, in whole or in part, in the order of maturity as determined by the City, and by lot within a maturity, on thirty (30) days' notice, at face value, with no premium, plus accrued interest to the date fixed for redemption. The exact redemption dates shall be established by the Controller, with the advice of the City's financial advisor, prior to the sale of the Bonds.

(d) If any Bond is issued as a term bond, the Paying Agent shall credit against the mandatory sinking fund requirement for the Bonds maturing as term bonds, and corresponding mandatory redemption obligation, in the order determined by the City, any Bonds maturing as term bonds which have previously been redeemed (otherwise than as a result of a previous mandatory redemption requirement) or delivered to the Registrar for cancellation or purchased for cancellation by the Paying Agent and not theretofore applied as a credit against any redemption obligation. Each Bond maturing as a term bond so delivered or cancelled shall be credited by the Paying Agent at 100% of the principal amount thereof against the mandatory sinking fund obligation on such mandatory sinking fund date, and any excess of such amount shall be credited on future redemption obligations, and the principal amount of the Bonds to be redeemed by operation of the mandatory sinking fund requirement shall be accordingly reduced; provided, however, the Paying Agent shall credit only such Bonds maturing as term bonds to the extent received on or before forty-five (45) days preceding the applicable mandatory redemption date.

Each authorized denomination shall be considered a separate bond for purposes of optional and mandatory redemption. If less than an entire maturity is called for redemption at one time, the Bonds to be redeemed shall be selected by lot within a maturity by the Registrar. If some Bonds

are to be redeemed by optional redemption and mandatory sinking fund redemption on the same date, the Registrar shall select by lot the Bonds for optional redemption before selecting the Bonds by lot for the mandatory sinking fund redemption.

(e) Notice of redemption shall be given not less than sixty (60) days for Bonds sold to the Authority as part of its DWSRF Program and not less than thirty (30) days for Bonds sold to any other purchaser prior to the date fixed for redemption unless such redemption notice is waived by the owner of the Bond or Bonds redeemed. Such notice shall be mailed to the address of the registered owner as shown on the registration record of the City as of the date which is sixty-five (65) days for Bonds sold to the Authority as part of its DWSRF Program and forty-five (45) days for Bonds sold to any other purchaser prior to such redemption date. The notice shall specify the date and place of redemption and sufficient identification of the Bonds called for redemption. The place of redemption may be determined by the City. Interest on the Bonds so called for redemption shall cease on the redemption date fixed in such notice if sufficient funds are available at the place of redemption to pay the redemption price on the date so named.

Section 5. Execution and Negotiability. Each series of Bonds and BANs shall be executed in the name of the City by the manual or facsimile signature of the Mayor, countersigned by the manual or facsimile signature of the Controller, and attested by the manual or facsimile signature of its Clerk, and the seal of the City shall be affixed, imprinted or impressed to or on each of the Bonds and BANs manually, by facsimile or any other means; and these officials, by the execution of a Signature and No Litigation Certificate, shall adopt as and for their own proper signatures the facsimile signatures appearing on the Bonds or BANs. In case any officer whose signature or facsimile signature appears on the Bonds or BANs shall cease to be such officer before

the delivery of the Bonds or BANs, the signature of such officer shall nevertheless be valid and sufficient for all purposes the same as if such officer had remained in office until such delivery.

The Bonds and BANs shall have all of the qualities and incidents of negotiable instruments under the laws of the State of Indiana, subject to the provisions for registration herein.

The Bonds shall also be authenticated by the manual signature of the Registrar, and no Bond shall be valid or become obligatory for any purpose until the certificate of authentication thereon has been so executed.

Section 6. Form of Bonds. The form and tenor of the Bonds shall be substantially as follows, all blanks to be filled in properly prior to delivery:

[Unless this certificate is presented by an authorized representative of The Depository Trust Company, a New York corporation ("DTC"), to the City of Mishawaka, Indiana, or its agent for registration of transfer, exchange, or payment, and any certificate issued is registered in the name of Cede & Co. or in such other name as is requested by an authorized representative of DTC (and any payment is made to Cede & Co. or to such other entity as is requested by an authorized representative of DTC), ANY TRANSFER, PLEDGE, OR OTHER USE HEREOF FOR VALUE OR OTHERWISE BY OR TO ANY PERSON IS WRONGFUL inasmuch as the registered owner hereof, Cede & Co., has an interest herein.]

NO. _____

UNITED STATES OF AMERICA

STATE OF INDIANA

COUNTY OF ST. JOSEPH

CITY OF MISHAWAKA
WATERWORKS REVENUE BOND OF _____[, SERIES ____]

[INTEREST RATE]	[MATURITY DATE]	ORIGINAL DATE	AUTHENTICATION DATE	[CUSIP]
---------------------	---------------------	------------------	------------------------	---------

REGISTERED OWNER:

PRINCIPAL SUM:

The City of Mishawaka, in St. Joseph County, State of Indiana ("City"), for value received, hereby promises to pay to the Registered Owner named above or registered assigns, solely out of

the special revenue fund hereinafter referred to, the Principal Sum set forth above, [or so much thereof as may be advanced from time to time and be outstanding as evidenced by the records of the registered owner making payment for this bond, or its assigns,] on [the Maturity Date set forth above] **OR** [January 1 and July 1 on the dates and in the amounts as set forth on Exhibit A attached hereto] (unless this bond be subject to and be called for redemption prior to maturity as hereinafter provided), and to pay interest hereon until the Principal Sum shall be fully paid at the interest rate[s] per annum stated [above] **OR** [on Exhibit A attached hereto] from [the dates of payment made on this bond] **OR** [the interest payment date to which interest has been paid next preceding the Authentication Date of this bond unless this bond is authenticated after the fifteenth day of the month preceding an interest payment date and on or before such interest payment date in which case it shall bear interest from such interest payment date, or unless this bond is authenticated on or before _____ 15, 20__, which case it shall bear interest from the Original Date,] which interest is payable semiannually on January 1 and July 1 of each year, beginning on _____ 1, 20___. Interest shall be calculated according to a 360-day calendar year containing twelve 30-day months.

[The principal of this bond is payable at the [principal corporate trust] office of _____ ("Registrar") or "Paying Agent"), in the _____ of _____, _____]. All payments of [principal of and] interest on this bond shall be paid by [check mailed one business day prior to the interest payment date] **OR** [paid by wire transfer for deposit to a financial institution as directed by the Indiana Finance Authority ("Authority") on the due date or, if such due date is a day when financial institutions are not open for business, on the business day immediately after such due date] to the registered owner hereof as of the fifteenth day of the month preceding such interest payment date at the address as it appears on the registration books kept by [_____ ("Registrar" or "Paying Agent") in the _____ of _____, Indiana] **OR** [the Registrar] or at such other address as is provided to the Paying Agent in writing by the registered owner. [Notwithstanding anything to the contrary herein, this bond shall not be required to be presented or surrendered to receive payment in connection with any mandatory sinking fund redemption until the final maturity date of this bond or earlier payment in full of this bond.] [If payment of principal or interest is made to a depository, payment shall be made by wire transfer on the payment date in same-day funds. If the payment date occurs on a date when financial institutions are not open for business, the wire transfer shall be made on the next succeeding business day. The Paying Agent shall wire transfer payments by 1:00 p.m. (New York City time) so such payments are received at the depository by 2:30 p.m. (New York City time).] All payments on the bond shall be made in any coin or currency of the United States of America, which on the dates of such payment, shall be legal tender for the payment of public and private debts.

THE CITY SHALL NOT BE OBLIGATED TO PAY THIS BOND OR THE INTEREST HEREON EXCEPT FROM THE HEREINAFTER DESCRIBED SPECIAL FUND, AND NEITHER THIS BOND NOR THE ISSUE OF WHICH IT IS A PART SHALL IN ANY RESPECT CONSTITUTE A CORPORATE INDEBTEDNESS OF THE CITY WITHIN THE PROVISIONS AND LIMITATIONS OF THE CONSTITUTION OF THE STATE OF INDIANA.

This bond is [the only] one of an authorized issue of bonds of the City [[to be] [issued in series]], of like date, tenor and effect, except as to numbering, interest rate[, series designation,]

and date of maturity]; in the total amount of _____ Dollars (\$_____); numbered consecutively from 1 up; issued for the purpose of providing funds to pay the cost of certain additions, extensions and improvements to the municipally owned waterworks system of the City[, to refund interim notes issued in anticipation of the bonds] and to pay issuance expenses[, including a premiums for municipal bond insurance and/or a debt service reserve surety]. This bond is issued pursuant to an ordinance adopted by the Common Council of the City on the ___ day of _____, 2020, entitled "An Ordinance of the City of Mishawaka authorizing the issuance of waterworks revenue bonds for the purpose of providing funds to pay the cost of certain additions, extensions and improvements to the municipal waterworks of said City, providing for the safeguarding of the interests of the owners of said bonds, other matters connected therewith, including the issuance of notes in anticipation of bonds, and repealing ordinances inconsistent herewith" ("Ordinance"), and in accordance with the provisions of Indiana law, including without limitation Indiana Code 8-1.5 as in effect on the date of delivery of the bonds of this issue ("Act").

[Reference is hereby made to the Financial Assistance Agreement ("Financial Assistance Agreement") between the City and the Authority concerning certain terms and covenants pertaining to the waterworks project and the purchase of this bond as part of the drinking water loan program established and existing pursuant to IC 5-1.2-1 through IC 5-1.2-4 and IC 5-1.2-10.]

Pursuant to the provisions of the Act and the Ordinance, the principal of and interest on this bond and all other bonds of said issue, [including the Waterworks Revenue Bonds of _____, Series ____ ("Series ____ Bonds")] and any bonds hereafter issued on a parity therewith are payable solely from the Waterworks Sinking Fund continued by the Ordinance ("Sinking Fund") to be provided from the Net Revenues (defined as the gross revenues, inclusive of System Development Charges (as defined in the Ordinance), after deduction only for the payment of the reasonable expenses of operation, repair and maintenance, excluding transfers for payment in lieu of property taxes) of the waterworks of the City. This bond and the issue of which it is a part ranks on a parity with the Outstanding Bonds (as defined in the Ordinance) [and the Series ____ Bonds], in accordance with the terms thereof and senior to the Electric Utility Pledge (as defined in the Ordinance).

The City irrevocably pledges the entire Net Revenues of the waterworks to the prompt payment of the principal of and interest on the bonds authorized by the Ordinance, of which this is one, and any bonds ranking on a parity therewith, including the Outstanding Bonds [and the Series ____ Bonds], to the extent necessary for that purpose, and covenants that it will cause to be fixed, maintained and collected such rates and charges for services rendered by the utility as are sufficient in each year for the payment of the proper and reasonable expenses of Operation and Maintenance (as defined in the Financial Assistance Agreement, as defined in the Ordinance) of the waterworks and, for the payment of the sums required to be paid into the Sinking Fund under the provisions of the Act and the Ordinance. If the City or the proper officers thereof shall fail or refuse to so fix, maintain and collect such rates or charges, or if there be a default in the payment of the interest on or principal of this bond, the owner of this bond shall have all of the rights and remedies provided for under Indiana law.

[The bonds shall be initially issued in a Book Entry System (as defined in the Ordinance). The provisions of this bond and of the Ordinance are subject in all respects to the provisions of the

Letter of Representations between the City and DTC, or any substitute agreement, effecting such Book Entry System.]

The City further covenants that it will set aside and pay into its Sinking Fund monthly, as available, or more often if necessary, a sufficient amount of the Net Revenues of the works for payment of (a) the interest on all bonds which by their terms are payable from the revenues of the waterworks, as such interest shall fall due, (b) the necessary fiscal agency charges for paying bonds and interest, (c) the principal of all bonds which by their terms are payable from the revenues of the waterworks, as such principal shall fall due, and (d) an additional amount as a margin of safety to [create and] maintain the debt service reserve required by the Ordinance. Such required payments shall constitute a first charge against the Net Revenues of said works, on a parity with the Outstanding Bonds [and the Series ____ Bonds] and senior to the Electric Utility Pledge.

The bonds of this issue maturing on _____ 1, 20__, and thereafter, are redeemable at the option of the City on _____ 1, 20__, or any date thereafter, on [sixty (60)] [thirty (30)] days' notice, in whole or in part, in [inverse] [the] order of maturity [as determined by the City] and by lot within a maturity, at face value together with the following premiums:

_____% if redeemed on _____, or thereafter
on or before _____;
_____% if redeemed on _____, or thereafter
on or before _____;
_____% if redeemed on _____, or thereafter
prior to maturity;

plus in each case accrued interest to the date fixed for redemption[]; provided, however, if the Bonds are sold to the DWSRF Program and registered in the name of the Authority, the Bond shall not be redeemable at the option of the City unless and until consented to by the Authority].

[The bonds maturing on _____ 1, 20_ are subject to mandatory sinking fund redemption prior to maturity, at a redemption price equal to the principal amount thereof plus accrued interest, on January 1 and July 1 on the dates and in the amounts set forth below:

<u>Term Bond</u>	
<u>Date</u>	<u>Amount</u>
*	

<u>Term Bond</u>	
<u>Date</u>	<u>Amount</u>
*	

*Final Maturity]

Each [One Dollar (\$1)] **OR** [Five Thousand Dollar (\$5,000)] principal amount shall be considered a separate bond for purposes of optional [and mandatory] redemption. If less than an entire maturity is called for redemption, the bonds to be called shall be selected by lot by the Registrar. [If some bonds are to be redeemed by optional redemption and mandatory sinking fund redemption on the same date, the Registrar shall select by lot the bonds for optional redemption before selecting the bonds by lot for the mandatory sinking fund redemption.]

Notice of redemption shall be mailed to the address of the registered owner as shown on the registration record of the City, as of the date which is [sixty-five (65)] **OR** [forty-five (45)] days prior to such redemption date, not less than [sixty (60)] **OR** [thirty (30)] days prior to the date fixed for redemption. The notice shall specify the date and place of redemption and sufficient identification of the bonds called for redemption. The place of redemption may be determined by the City. Interest on the bonds so called for redemption shall cease on the redemption date fixed in such notice, if sufficient funds are available at the place of redemption to pay the redemption price on the date so named.

If this bond shall not be presented for payment or redemption on the date fixed therefor, the City may deposit in trust with its depository bank an amount sufficient to pay such bond or the redemption price, as the case may be, and thereafter the registered owner shall look only to the funds so deposited in trust with said bank for payment and the City shall have no further obligation or liability in respect thereto.

This bond is transferable or exchangeable only upon the books of the City kept for that purpose at the [principal corporate trust] office of the Registrar by the registered owner hereof in person, or by his attorney duly authorized in writing, upon surrender of this bond together with a written instrument of transfer or exchange satisfactory to the Registrar duly executed by the registered owner, or his attorney duly authorized in writing, and thereupon a new fully registered bond or bonds in an authorized aggregate principal amount and of the same maturity, shall be executed and delivered in the name of the transferee or transferees or to the registered owner, as the case may be, in exchange therefor. This bond may be transferred without cost to the registered owner except for any tax or governmental charge required to be paid with respect to the transfer. The City, the Registrar, the Paying Agent and any other registrar or paying agent for this bond may treat and consider the person in whose name this bond is registered as the absolute owner hereof for all purposes including for the purpose of receiving payment of, or on account of, the principal hereof and interest due hereon.

This bond is subject to defeasance prior to redemption or payment as provided in the Ordinance referred to herein. THE OWNER OF THIS BOND, BY THE ACCEPTANCE HEREOF, HEREBY AGREES TO ALL THE TERMS AND PROVISIONS CONTAINED IN THE ORDINANCE. The Ordinance may be amended without the consent of the owners of the bonds as provided in the Ordinance.

The bonds maturing in any one year are issuable only in fully registered form in the denomination of [\$5,000] **OR** [\$1] or any integral multiple thereof.

It is hereby certified and recited that all acts, conditions and things required to be done precedent to and in the execution, issuance and delivery of this bond have been done and performed in regular and due form as provided by law.

This bond shall not be valid or become obligatory for any purpose until the certificate of authentication hereon shall have been executed by an authorized representative of the Registrar.

IN WITNESS WHEREOF, the City of Mishawaka, in St. Joseph County, Indiana, has caused this bond to be executed in its corporate name by the manual or facsimile signature of its

Mayor, countersigned by the manual or facsimile signature of the Controller, its corporate seal to be hereunto affixed, imprinted or impressed by any means and attested manually or by facsimile by its Clerk.

CITY OF MISHAWAKA, INDIANA

By: _____
Mayor

COUNTERSIGNED:

By: _____
Controller

[SEAL]

Attest:

Clerk

REGISTRAR'S CERTIFICATE OF AUTHENTICATION

This bond is one of the bonds described in the within-mentioned Ordinance.

_____,
as Registrar

By: _____,
Authorized Representative

ASSIGNMENT

FOR VALUE RECEIVED the undersigned hereby sells, assigns and transfers unto _____ this bond and all rights thereunder, and hereby irrevocably constitutes and appoints _____, attorney, to transfer the within bond in the books kept for the registration thereof with full power of substitution in the premises.

Dated: _____

NOTICE: Signature(s) must be guaranteed by an eligible guarantor institution participating in a Securities Transfer Association recognized signature guarantee program.

NOTICE: The signature to this assignment must correspond with the name as it appears on the face of the within bond in every particular, without alteration or enlargement or any change whatsoever.

[EXHIBIT A]

(End of Bond Form)

Section 7. Authorization for Preparation and Sale of the Bonds and BANs; Official Statement; Continuing Disclosure; Insurance. (a) The Controller is hereby authorized and directed to have the Bonds and BANs prepared, and the Mayor, Controller and Clerk are hereby authorized and directed to execute and attest the Bonds and BANs in the form and manner provided herein.

(b) The Controller is hereby authorized and directed to deliver the Bonds and BANs to the respective purchasers thereof. At the time of delivery of the Bonds and BANs, the Controller shall collect the full amount which the respective purchasers have agreed to pay therefor, which amount shall not be less than the par value of the BANs if sold to the Authority as part of its DWSRF Program, not less than 99.5% of the par value of the BANs if sold to any other purchaser, not less than the par value of the Bonds if sold to the Authority as part of its DWSRF Program, and not less than 99% of the par value of the Bonds if sold to any other purchaser, as the case may be, plus accrued interest to the date of delivery, if any. The City may receive payment on the BANs and the Bonds in installments. The Bonds, as and to the extent paid for and delivered to the purchaser, shall be the binding special revenue obligations of the City payable out of the Net Revenues of the waterworks, on a parity with the Outstanding Bonds, to be set aside into the Sinking Fund as herein provided. The proceeds derived from the sale of the Bonds shall be and are hereby set aside for application on the cost of the Project hereinbefore referred to, the refunding of the BANs, if issued, and the expenses necessarily incurred in connection with the BANs and Bonds. The proper officers of the City are hereby directed to sell the Bonds, to draw all proper

and necessary warrants, and to do whatever acts and things which may be necessary to carry out the provisions of this ordinance.

(c) Distribution of an Official Statement (preliminary and final) prepared by Baker Tilly Municipal Advisors, LLC on behalf of the City, is hereby authorized and approved and the Mayor or the Controller are authorized and directed to execute the Official Statement on behalf of the City in a form consistent with this ordinance. The Mayor or the Controller is authorized to designate the preliminary Official Statement as "nearly final" for purposes of Rule 15c2-12 as promulgated by the Securities and Exchange Commission ("Rule").

If an Official Statement is not required upon delivery of the Bonds, the City shall obtain an investment letter from the purchaser of the Bonds which satisfies federal and state securities laws applicable to the Bonds.

(d) If required under the Rule, the Mayor and Controller are hereby authorized and directed to complete, execute and attest a Continuing Disclosure Undertaking ("Disclosure Undertaking") for the Bonds on behalf of the City, in a form consistent with this ordinance. Notwithstanding any other provisions of this ordinance, failure of the City to comply with the Disclosure Undertaking shall not be considered an event of default under the Bonds or this ordinance.

(e) In the event the financial advisor to the City certifies to the City that it would be economically advantageous for the City to obtain a municipal bond insurance policy the City hereby authorizes the purchase of such an insurance policy. The acquisition of a municipal bond insurance policy is hereby deemed economically advantageous in the event the difference between the present value cost of (a) the total debt service on the Bonds if issued without municipal bond insurance and (b) the total debt service on the Bonds if issued with municipal bond insurance, is

greater than the cost of the premium on the municipal bond insurance policy. If such an insurance policy is purchased, the Mayor and the Controller are hereby authorized to execute and deliver all agreements with the provider of the policy to the extent necessary to comply with the terms of such insurance policy and the commitment to issue such policy. Such agreement shall be deemed a part of this ordinance for all purposes and is hereby incorporated herein by reference.

Section 8. Sale of the Bonds; Award of Bonds. If the Bonds will be sold at a competitive sale, the Controller shall cause to be published either (i) a notice of such sale in the newspaper or newspapers which meet the requirements of IC 5-3-1, two times, at least one week apart, the first publication made at least fifteen (15) days before the date of the sale and the second publication being made at least three (3) days before the date of the sale, or (ii) a notice of intent to sell in the newspaper or newspapers which meet the requirements of IC 5-3-1 and the *Indianapolis Business Journal*, all in accordance with IC 5-1-11 and IC 5-3-1. A notice or summary notice of sale may also be published one time in the *Indianapolis Business Journal*, and a notice or summary notice may also be published in *The Bond Buyer* in New York, New York. The notice shall state the character and amount of the Bonds, the maximum rate of interest thereon, the terms and conditions upon which bids will be received and the sale made, and such other information as the Controller and the attorneys employed by the City shall deem advisable and any summary notice may contain any information deemed so advisable. The notice will also state that the winning bidder will agree to assist the City in establishing the issue price of the Bonds under Treas. Reg. Section 1.148-1(f) ("Issue Price Regulation"). The criteria for establishing the issue price under the Issue Price Regulation shall be set forth in the preliminary Official Statement and/or the bid form. The notice may provide, among other things, that electronic bidding will be permitted and that the winning bidder shall be required to submit a certified or cashier's check in

an amount equal to 1% of the principal amount of the Bonds described in the notice within twenty-four hours of the sale and that in the event the successful bidder shall fail or refuse to accept delivery of the Bonds and pay for the same as soon as the Bonds are ready for delivery, or at the time fixed in the notice of sale, then said check and the proceeds thereof shall be the property of the City and shall be considered as its liquidated damages on account of such default; that bidders for the Bonds will be required to name the rate or rates of interest which the Bonds are to bear, not exceeding the maximum rate hereinbefore fixed, and that such interest rate or rates shall be in multiples of one-eighth ($1/8$), one-twentieth ($1/20$) or one-hundredth ($1/100$) of one percent (1%). The notice may state that the rate bid on a maturity shall be equal to or greater than the rate bid on the immediately preceding maturity. No conditional bid or bid for less than 99% of the face amount of the Bonds will be considered. The opinion of Ice Miller LLP, bond counsel of Indianapolis, Indiana, approving the legality of the Bonds, will be furnished to the purchaser at the expense of the City.

The Bonds shall be awarded by the Controller to the best bidder who has submitted his bid in accordance with the terms of this ordinance, IC 5-1-11 and the notice. The best bidder will be the one who offers the lowest net interest cost to the City, to be determined by computing the total interest on all of the Bonds to their maturities, adding thereto the discount bid, if any, and deducting the premium bid, if any. The right to reject any and all bids shall be reserved. If an acceptable bid is not received on the date of sale, the sale may be continued from day to day thereafter without further advertisement for a period of thirty (30) days, during which time no bid which provides a higher net interest cost to the City than the best bid received at the time of the advertised sale will be considered.

As an alternative to public sale, the Controller may negotiate the sale of the Bonds to the Authority as part of its DWSRF Program. The Mayor and the Controller are hereby authorized to: (i) submit an application to the Authority as part of its DWSRF Program; (ii) execute a Financial Assistance Agreement with the Authority with terms conforming to this ordinance; and (iii) sell such Bonds upon such terms as are acceptable to the Mayor and the Controller consistent with the terms of this ordinance. The substantially final form of Financial Assistance Agreement attached hereto and incorporated herein by reference as Exhibit B is hereby approved by the Common Council and the Mayor and Controller are hereby authorized to execute and deliver the same, and to approve any changes in form or substance to the Financial Assistance Agreement, which are consistent with the terms of this ordinance, such changes to be conclusively evidenced by its execution.

Notwithstanding anything contained herein, the City may accept any other forms of financial assistance, as and if available, from the DWSRF Program (including without limitation any forgivable loans, grants or other assistance whether available as an alternative to any Bond or BAN related provision otherwise provided for herein or as a supplement or addition thereto). If required by the DWSRF Program to be eligible for such financial assistance, one or more of the series of the Bonds issued hereunder may be issued on a basis such that the payment of the principal of or interest on (or both) of such series of Bonds is junior and subordinate to the payment of the principal of and interest on other series of Bonds issued hereunder (and/or any other revenue bonds secured by a pledge of Net Revenues, whether now outstanding or hereafter issued), all as provided by the terms of such series of Bonds as modified pursuant to this authorization. Such financial assistance, if any, shall be provided in the Financial Assistance Agreement and the Bonds of each

series of Bonds issued hereunder (including any modification made pursuant to the authorization in this paragraph to the form of Bonds otherwise contained herein).

Section 9. Financial Records and Accounts. (a) The City shall keep proper records and books of account, separate from all of its other records and accounts, in which complete and correct entries shall be made showing all revenues received on account of the operation of the waterworks and all disbursements made therefrom and all transactions relating to the waterworks. Copies of all such statements and reports shall be kept on file in the office of the Clerk.

(b) If the Bonds or BANs are sold to the Authority as part of its DWSRF Program, the City shall establish and maintain the books and other financial records of the Project (including the establishment of a separate account or subaccount for the Project) and the waterworks in accordance with (i) generally accepted governmental accounting standards for utilities, on an accrual/cash basis, as promulgated by the Government Accounting Standards Board and (ii) the rules, regulations and guidance of the State Board of Accounts.

Section 10. Accrued Interest. The accrued interest received at the time of delivery of the Bonds, if any, and premium, if any, shall be deposited in the Waterworks Sinking Fund continued in Section 15.

Section 11. Use of Proceeds and Costs of Issuance. The proceeds from the sale of the Bonds, to the extent not used to refund BANs, and BAN proceeds shall be deposited in a bank or banks which are legally designated depositories for the funds of the City, in a special account or accounts to be designated as "City of Mishawaka, Waterworks Construction Account" ("Construction Account"). All funds deposited to the credit of the Waterworks Sinking Fund or the Construction Account shall be deposited, held, secured or invested in accordance with the laws of the State of Indiana relating to the depositing, holding, securing or investing of public funds,

including particularly IC 5-13, as amended and supplemented, and as applicable, pursuant to IC 5-1.2-1 through IC 5-1.2-4-11 and IC 5-1.2-10. The funds in the Construction Account shall be expended only for the purpose of paying the cost of the Project, refunding the BANs, if issued, or as otherwise required by the Act or for the expenses of issuance of the Bonds and BANs. The cost of obtaining the services of Ice Miller LLP, the City Attorney and Baker Tilly Municipal Advisors, LLC shall be considered as a part of the cost of the Project on account of which the Bonds and BANs are issued.

Any balance or balances remaining unexpended in such special account or accounts after completion of the Project, which are not required to meet unpaid obligations incurred in connection with such Project, shall either (1) be paid into the Waterworks Sinking Fund and used solely for the purposes of the Waterworks Sinking Fund or (2) be used for the same purpose or type of project for which the Bonds were originally issued, all in accordance with IC 5-1-13, as amended and supplemented.

If the Bonds are sold to the Authority as part of its DWSRF Program, to the extent (a) that the total principal amount of the Bonds is not paid by the purchaser or drawn down by the City or (b) proceeds remain in the Construction Account and are not applied to the Project (or any modifications or additions thereto approved by the Department and the Authority), the City shall reduce the principal amount of the Bond maturities to effect such reduction in a manner that will still achieve the annual debt service as described in Section 2 subject to and upon the terms forth in the Financial Assistance Agreement.

Section 12. Pledge of Net Revenues. The interest on and the principal of the Bonds issued pursuant to the provisions of this ordinance, and any bonds hereafter issued on a parity therewith, shall constitute a first charge on all the Net Revenues and such Net Revenues are hereby

irrevocably pledged to the payment of the interest on and principal of such Bonds, to the extent necessary for that purpose.

Section 13. Revenue Fund. There is hereby continued the Waterworks Revenue Fund ("Revenue Fund") into which shall be deposited all income and revenues derived from the operation of the waterworks and from the collection of water rates and charges (including any System Development Charges) of the waterworks. The Revenue Fund shall be maintained separate and apart from all other accounts of the City. Out of these revenues the proper and reasonable expenses of operation, repair and maintenance of the works shall be paid, the principal of and interest on all bonds and fiscal agency charges of registrars or paying agents shall be paid, the reserve shall be funded, and the costs of improvements, replacements, additions and extensions of the waterworks and shall be paid.

Section 14. Operation and Maintenance Fund. There is hereby continued a fund known as the Operation and Maintenance Fund ("O&M Fund"). On the last day of each calendar month, revenues of the waterworks shall be transferred from the Revenue Fund to the O&M Fund. The balance maintained in this Fund shall be sufficient to pay the expenses of operation, repair and maintenance of the waterworks for the then next succeeding two (2) calendar months. The moneys credited to this Fund shall be used for the payment of the reasonable and proper operation, repair and maintenance expenses of the waterworks on a day-to-day basis, but none of the monies in the O&M Fund shall be used for PILOTs, depreciation, replacements, improvements, extensions or additions. Any monies in the O&M Fund may be transferred to the Waterworks Sinking Fund if necessary to prevent a default in the payment of principal of or interest on the outstanding bonds of the waterworks.

Section 15. Waterworks Sinking Fund. (a) There is hereby continued a special fund designated the "Waterworks Sinking Fund" ("Sinking Fund") for the payment of the principal of and interest on revenue bonds which by their terms are payable from the Net Revenues of the waterworks and the payment of any fiscal agency charges in connection with the payment of bonds and interest. There shall be set aside and deposited in the Sinking Fund, as available, and as provided below, a sufficient amount of the Net Revenues of the waterworks to meet the requirements of the Bond and Interest Account, the Reserve Account and the 2007 Reserve Account hereby continued in the Sinking Fund. Such payments shall continue until the balances in the Bond and Interest Account, the 2007 Reserve Account and the Reserve Account equal the amount needed to redeem all the then outstanding bonds of the waterworks.

(b) Bond and Interest Account. There is hereby continued, within the Sinking Fund, the Bond and Interest Account ("Bond and Interest Account"). There shall be credited on the last day of each month from the Revenue Fund to the Bond and Interest Account an amount of the Net Revenues equal to: (i) at least one-sixth ($1/6$) of the interest on all then outstanding bonds payable on the then next succeeding interest payment date; and (ii) at least one-sixth ($1/6$) of the principal payable on all then outstanding bonds payable on the then next succeeding principal payment date, until the amount of interest and principal payable on the then next succeeding interest and principal payment date shall have been so credited. There shall similarly be credited to the Account any amount necessary to pay the bank fiscal agency charges for paying principal and interest on outstanding bonds as the same become payable. The City shall, from the sums deposited in the Sinking Fund and credited to the Bond and Interest Account, remit promptly to the registered owner or to the bank fiscal agency sufficient moneys to pay the interest and principal on the due dates thereof together with the amount of bank fiscal agency charges.

(c) 2007 Reserve Account; Reserve Account. (i) There is hereby continued, within the Sinking Fund, the 2007 Reserve Account ("2007 Reserve Account"). The 2007 Reserve Account provides security for the 2007 Bonds and contains a debt service reserve surety ("2007 Surety") and cash in accordance with the requirements established by the ordinance authorizing the 2007 Bonds ("2007 Ordinance"). The City shall continue to maintain the 2007 Reserve Account in accordance with the 2007 Ordinance and the 2007 Surety. The 2007 Reserve Account does not secure and may not be used to pay the principal of or interest on the 2013 Bonds, the 2018 Bonds or the Bonds authorized herein.

(ii) The ordinance authorizing the 2013 Bonds, created an account designated "Reserve Account" as a reserve for the 2013 Bonds ("Reserve Account"). The Reserve Account was continued in the ordinance authorizing the 2018 Bonds and is hereby continued for the 2013 Bonds, the 2018 Bonds and shall also serve as the reserve to the Bonds authorized herein. On the date of delivery of the Bonds, funds on hand of the waterworks, Bond proceeds or any combination thereof may be deposited into the Reserve Account. The initial deposit or the balance maintained in the Reserve Account shall equal but not exceed the least of: (i) maximum annual debt service on the 2013 Bonds, the 2018 Bonds, the Bonds and any bonds issued in the future by the City which are payable from Net Revenues of the waterworks and which rank on a parity with the 2013 Bonds, 2018 Bonds and the Bonds ("Parity Bonds"); (ii) 125% of average annual debt service on the 2013 Bonds, 2018 Bonds, the Bonds and any Parity Bonds; or (iii) 10% of the stated principal amount or issue price, as applicable, of the 2013 Bonds, the 2018 Bonds, the Bonds and any Parity Bonds ("Reserve Requirement"); provided, however, that if any Bonds are sold to, or for so long as the 2018 Bonds are owned by, the Authority as part of its DWSRF Program, the Reserve Requirement shall equal the maximum annual debt service on the 2013 Bonds, the 2018 Bonds, the Bonds and

any Parity Bonds. If the initial deposit into the Reserve Account does not equal the Reserve Requirement or if no deposit is made, an amount of Net Revenues shall be credited to the Reserve Account on the last day of each calendar month until the balance therein equals the Reserve Requirement. The monthly deposits shall be equal in amount and sufficient to accumulate the Reserve Requirement within five years of the date of delivery of the Bonds.

The Reserve Account shall constitute the margin for safety and protection against default in the payment of principal of and interest on the 2013 Bonds, the 2018 Bonds, the Bonds and any Parity Bonds, and the moneys in the Reserve Account shall be used to pay current principal and interest on the 2013 Bonds, the 2018 Bonds, the Bonds and any Parity Bonds to the extent that moneys in the Bond and Interest Account are insufficient for that purpose. Any deficiency in the balance maintained in the Reserve Account shall be made up from the next available Net Revenues remaining after credits into the Bond and Interest Account on a parity basis with any payments made to replenish the 2007 Reserve Account. If moneys in the Reserve Account are transferred to the Bond and Interest Account to pay principal and interest on any 2013 Bonds, the 2018 Bonds, the Bonds or Parity Bonds, then this depletion of the balance in the Reserve Account shall be made up from the next available Net Revenues after the credits into the Bond and Interest Account and on a parity basis with any payments made to replenish the 2007 Reserve Account. Any moneys in excess of the Reserve Requirement shall be transferred to the Waterworks Improvement Fund.

(iii) Alternatively, the City may purchase a debt service reserve surety bond ("Surety") and create a separate subaccount of the Reserve Account for securing the Bonds (hereafter referred to as the "Surety Reserve Account"). The Surety Reserve Account may be satisfied with cash, a Surety or a combination thereof; provided that if any Bonds are sold to, and for so long as any of the 2018 Bonds are owned by the Authority as part of its DWSRF Program, the City shall obtain

the consent of the Authority. The initial balance or the balance to be accumulated in the Surety Reserve Account shall equal but not exceed the least of: (i) the maximum annual debt service on the Bonds and any Parity Bonds which by their terms may be secured by the Surety Reserve Account; (ii) 125% of average annual debt service on the Bonds and the Parity Bonds; or (iii) 10% of the stated principal amount or issue price, as applicable, of the Bonds and the Parity Bonds ("Surety Reserve Requirement"); provided, however, that if any Bonds are sold to the Authority as part of its DWSRF Program, the Surety Reserve Requirement shall equal the maximum annual debt service on the Bonds and any Parity Bonds. Such Surety Reserve Account shall be a separate account which secures only the Bonds (and any Parity Bonds which by their terms may be secured by the Surety Reserve Account) and, in that case, the Reserve Account shall not secure the Bonds. If created, the Surety Reserve Account shall not secure the 2007 Bonds, the 2013 Bonds or the 2018 Bonds. If such Surety is purchased, the Mayor and the Controller are hereby authorized to execute and deliver all agreements with the provider of the Surety to the extent necessary to comply with the terms of such Surety and the commitment to issue such Surety. Such agreement shall set out the terms for the Surety, including the operational provisions of replenishing the Surety, and shall be deemed a part of this ordinance for all purposes and is hereby incorporated herein by reference. If a Surety is not purchased for the Bonds, the Surety Reserve Account shall not be created as a subaccount of the Reserve Account; provided, however, the City reserves the right to purchase a Surety in the future for any Parity Bonds and the Bonds and in that case, the Surety Reserve Account shall be created and operational.

(d) If the Bonds are sold to the Authority as part of its DWSRF Program, the Sinking Fund, containing the Bond and Interest Account and the Reserve Account, and the Construction Account, may be held by a financial institution acceptable to the Authority as part of its DWSRF

Program, pursuant to terms acceptable to the Authority. If the Sinking Fund and the accounts therein are held in trust, the City shall transfer the monthly required amounts of Net Revenues to the Bond and Interest Account and the Reserve Account in accordance with this Section 15, and the financial institution holding such funds in trust shall be instructed to pay the required payments in accordance with the payment schedules for the City's outstanding bonds. The financial institution selected to serve in this role may also serve as the Registrar and the Paying Agent for any series of the Bonds and for all or any of the Outstanding Bonds. If the Construction Account is so held in trust, the City shall deposit the proceeds of the Bonds therein until such proceeds are applied consistent with this ordinance and the Financial Assistance Agreement with respect to the Bonds. The Mayor and the Controller are hereby authorized to execute and deliver an agreement with a financial institution to reflect this trust arrangement for all or a part of the Sinking Fund and the Construction Account in the form of trust agreement as approved by the Mayor and the Controller, consistent with the terms and provisions of this ordinance.

Section 16. Waterworks Improvement Fund. The Waterworks Improvement Fund ("Improvement Fund") is hereby continued. After meeting the requirements of the O&M Fund and the Sinking Fund, any excess revenues shall be transferred or credited from the Revenue Fund to the Improvement Fund, and said Fund shall be used for improvements, replacements, additions or extensions to the waterworks, ~~and~~ to make payments representing PILOTs and to meet the Electric Utility Pledge pursuant to the Pledge Resolution. The City reserves the right to transfer PILOTs from the Improvement Fund no more frequently than semiannually, in accordance with the Act, and only if all required transfers have been made to the Sinking Fund and the O&M Fund and the Accounts of the Sinking Fund contain the required balances as of the date the PILOTs are paid. The Improvement Fund may also be used to pay principal of and interest on the BANs.

Moneys in the Improvement Fund shall be transferred to the Sinking Fund if necessary to prevent a default in the payment of principal of or interest on the then outstanding bonds or, if necessary, to eliminate any deficiencies in credits to or minimum balance in the 2007 Reserve Account and the Reserve Account of the Sinking Fund or may be transferred to the O&M Fund to meet unforeseen contingencies in the operation, repair and maintenance of the waterworks. Any transfers of moneys in the Improvement Fund for purposes of the Electric Utility Pledge shall be subject to and limited by the requirements of this Section and any requirements to fund the O&M Fund and Sinking Fund as described herein.

Section 17. Maintenance of Accounts; Investments. The Sinking Fund shall be deposited in and maintained as a separate banking account or accounts from all other accounts of the City. The O&M Fund and the Improvement Fund may be maintained in a single banking account, or accounts, but such account, or accounts, shall likewise be maintained separate and apart from all other banking accounts of the City and apart from the Sinking Fund account or accounts. All moneys deposited in the accounts shall be deposited, held and secured as public funds in accordance with the public depository laws of the State of Indiana; provided that moneys therein may be invested in obligations in accordance with the applicable laws, including particularly IC 5-13, as amended or supplemented and as applicable, pursuant to IC 5-1.2-1 through IC 5-1.2-4 and IC 5-1.2-10, and in the event of such investment the income therefrom shall become a part of the funds invested and shall be used only as provided in this ordinance. Nothing in this section or elsewhere in this ordinance shall be construed to require that separate bank accounts be established and maintained for the Funds and Accounts created by this ordinance except that (a) the Sinking Fund and the Construction Account shall be maintained as a separate bank account from the other Funds and Accounts of the waterworks, and (b) the other Funds and

Accounts of the waterworks shall be maintained as a separate bank account from the other funds and accounts of the City.

Section 18. Defeasance of the Bonds. If, when the Bonds or a portion thereof shall have become due and payable in accordance with their terms or shall have been duly called for redemption or irrevocable instructions to call the Bonds or a portion thereof for redemption shall have been given, and the whole amount of the principal and the interest and the premium, if any, so due and payable upon all of the Bonds or a portion thereof then outstanding shall be paid; or (i) cash (insured at all times by the Federal Deposit Insurance Corporation or otherwise collateralized with obligations described in (ii) below), or (ii) direct obligations of (including obligations issued or held in book entry form on the books of) the Department of the Treasury of the United States of America, the principal of and the interest on which when due will provide sufficient moneys for such purpose, shall be held in trust for such purpose, and provision shall also be made for paying all fees and expenses for the redemption, then and in that case the Bonds or any designated portion thereof issued hereunder shall no longer be deemed outstanding or entitled to the pledge of the Net Revenues of the City's waterworks.

Section 19. Rate Covenant. The City shall establish, maintain and collect reasonable and just rates and charges for facilities and services afforded and rendered by said water utility, which shall to the extent permitted by law produce sufficient revenues at all times, provided that System Development Charges shall be excluded, to the extent permitted by law, when determining if such rates and charges are sufficient if any Bonds are sold to and for so long as the 2018 Bonds are outstanding and owned by the Authority as part of its DWSRF Program, to provide for the proper operation, repair and maintenance or Operation and Maintenance (as defined in the Financial Assistance Agreement) if the Bonds are sold to and for so long as the 2018 Bonds are

outstanding and owned by the Authority through its DWSRF Program, to comply with and satisfy all covenants contained in this ordinance and the Financial Assistance Agreement, to pay all the legal and other necessary expense incident to the operation of such utility, to include maintenance costs, operating charges, upkeep, repairs, interest charges on bonds or other obligations, to provide a sinking fund and debt service reserve for the liquidation of bonds or other evidences of indebtedness, to provide adequate funds to be used as working capital, as well as funds for making extensions, additions, and replacements, and also, for the payment of any taxes that may be assessed against such utility, it being the intent and purpose hereof that such charges shall produce an income sufficient to maintain such utility property in a sound physical and financial condition to render adequate and efficient service. So long as any of the Bonds herein authorized are outstanding, none of the facilities or services afforded or rendered by said system shall be furnished without a reasonable and just charge being made therefor. The City shall pay like charges for any and all services rendered by said utility to the City, and all such payments shall be deemed to be revenues of the utility. Such rates or charges shall, if necessary, be changed and readjusted from time to time so that the revenues therefrom shall always be sufficient to meet the expenses of operation, repair and maintenance of the waterworks or Operation and Maintenance, as the case may be, and said requirements of the Sinking Fund.

Section 20. Additional Bond Provisions. The City reserves the right to authorize and issue additional BANs at any time ranking on a parity with the BANs. The City reserves the right to authorize and issue additional Parity Bonds payable out of the Net Revenues of its waterworks ranking on a parity with the Bonds for the purpose of financing the cost of future additions, extensions and improvements to its waterworks, or to refund obligations, subject to the following conditions:

(a) The interest on and principal of all bonds or other obligations payable from the Net Revenues of the waterworks, including the Electric Utility Pledge, shall have been paid to date in accordance with the terms thereof, and all credits required to be made into the Waterworks Sinking Fund and the accounts thereof shall have been made to date.

(b) The Reserve Requirement for the Outstanding Bonds, the Bonds and any outstanding Parity Bonds has been funded in accordance with this ordinance and the Reserve Requirement shall be increased proportionately for any additional Parity Bonds.

(c) The amount of Net Revenues of the waterworks in the fiscal year immediately preceding the issuance of any such Parity Bonds shall be not less than one hundred twenty-five percent (125%) of the maximum annual interest and principal requirements of the then outstanding bonds, the maximum annual payments of Net Revenues made under the Electric Utility Pledge and the additional Parity Bonds proposed to be issued; or, prior to the issuance of the Parity Bonds the water rates and charges shall be increased sufficiently so that said increased rates and charges applied to the previous fiscal year's operations would have produced Net Revenues for said year equal to not less than one hundred twenty-five percent (125%) of the maximum annual interest and principal requirements of all bonds payable from the revenues of the waterworks, including the additional Parity Bonds proposed to be issued, and the maximum annual payments of Net Revenues made under the Electric Utility Pledge. For purposes of this subsection, the records of the waterworks shall be analyzed and all showings prepared by a certified public accountant employed by the City for that purpose. In addition, for purposes of this subsection, with respect to any Parity Bonds hereafter issued while the 2018 Bonds, or any Bonds sold to the Authority as part of its DWSRF Program, remain outstanding and owned by the Authority as part of its DWSRF Program, Net Revenues may not include any revenues from the System Development Charges

unless the Authority provides its consent to include all or some portion of the System Development Charges as part of the Net Revenues or otherwise consents to the issuance of such Parity Bonds without satisfying this subsection (c).

(d) The principal, or mandatory sinking fund redemption dates, of the additional Parity Bonds shall be payable semiannually on January 1 and July 1 and the interest on said additional Parity Bonds shall be payable semiannually on January 1 and July 1 in the years in which such principal and interest are payable.

(e) If any Bonds are sold to and for so long as the 2018 Bonds are outstanding and owned by the Authority as part of its DWSRF Program, (i) the City obtains the consent of the Authority, (ii) the City has faithfully performed and is in compliance with each of its obligations, agreements and covenants contained in the Financial Assistance Agreement and this ordinance, and (iii) the City is in compliance with its waterworks permits, except for non-compliance for which purpose the Parity Bonds are issued, including refunding bonds issued prior to, but part of the overall plan to eliminate such non-compliance.

Section 21. Further Covenants of the City; Maintenance, Insurance, Pledge Not To Encumber, Subordinate Indebtedness, and Contract with Bondholders. For the purpose of further safeguarding the interests of the owners of the Bonds and BANs, it is hereby specifically provided as follows:

(a) All contracts let by the City in connection with the construction of the Project shall be let after due advertisement as required by the laws of the State of Indiana, and all contractors shall be required to furnish surety bonds in an amount equal to 100% of the amount of such contracts, to insure the completion of said contracts in accordance with their terms, and such contractors shall also be required to carry such employers' liability and public liability insurance

as are required under the laws of the State of Indiana in the case of public contracts, and shall be governed in all respects by the laws of the State of Indiana relating to public contracts.

(b) The Project shall be constructed under plans and specifications approved by a competent engineer designated by the City. All estimates for work done or material furnished shall first be checked by the engineer and approved by the City.

(c) So long as any of the Bonds or BANs are outstanding, the City shall at all times maintain the waterworks system in good condition, and operate the same in an efficient manner and at a reasonable cost.

(d) So long as any of the Bonds or BANs are outstanding, the City shall maintain insurance coverage, including fidelity bonds, acceptable to the Authority if any Bonds or BANs are sold to and for so long as the 2018 Bonds are outstanding and owned by the Authority as part of its DWSRF Program, on the insurable parts of said works of a kind and in an amount such as would normally be carried by private companies engaged in a similar type of business. All insurance shall be placed with responsible insurance companies qualified to do business under the laws of the State of Indiana. Insurance proceeds collected shall be used in replacing or repairing the property destroyed or damaged; or if not used for that purpose shall be treated and applied as Net Revenues of the works; provided, if the Bonds or BANs are sold to and for so long as the 2018 Bonds are outstanding and owned by the Authority as part of its DWSRF Program, the Authority shall consent to any such treatment and application of such proceeds or awards as Net Revenues of the waterworks or any other different use of such proceeds or awards.

(e) So long as any of the Bonds are outstanding, the City shall not, either directly or indirectly, mortgage, pledge or otherwise encumber such works, or any part thereof, or any interest therein and it shall not sell, lease or otherwise dispose of any portion thereof except to replace

equipment which may become worn out or obsolete; provided that the City shall obtain the prior written consent of the Authority if any Bonds or BANs are sold to and for so long as the 2018 Bonds are outstanding and owned by the Authority as part of its DWSRF Program.

(f) If any BANs or Bonds are sold to and for so long as the 2018 Bonds are outstanding and owned by the Authority as part of its DWSRF Program, the City shall not without the prior written consent of the Authority (i) enter into any lease, contract or agreement or incur any other liabilities in connection with the waterworks other than for normal operating expenditures, or (ii) borrow any money (including without limitation any loan from other utilities operated by the City) in connection with the waterworks.

(g) Except as hereinbefore provided in Section 20 of this ordinance, so long as any of the Bonds are outstanding, no additional bonds or other obligations pledging any portion of the revenues of said waterworks shall be authorized, executed or issued by the City, except such as shall be made junior and subordinate in all respects to the Bonds, unless all of the Bonds are redeemed, retired or defeased pursuant to Section 18 hereof coincidentally with the delivery of such additional bonds or other obligations.

(h) The provisions of this ordinance shall constitute a contract by and between the City and the owners of the Bonds and BANs herein authorized, and after the issuance of the Bonds or BANs, this ordinance shall not be repealed or amended in any respect which will materially and adversely affect the rights of the owners of the Bonds or BANs, nor shall the Common Council adopt any law, ordinance or resolution which in any way adversely affecting the rights of such owners so long as any of the Bonds, the BANs, or the interest thereon, remain unpaid. Except in the case of changes described in Section 22 (a)-(f), this ordinance may be amended, however, without the consent of the owners of the Bonds or BANs, if the Common Council determines, in

its sole discretion, that such amendment would not adversely affect the owners of the Bonds or BANs; provided, however, that if any Bonds or BANs are sold to and for so long as the 2018 Bonds are outstanding and owned by the Authority as part of its DWSRF Program, the City shall obtain the prior written consent of the Authority.

(i) The provisions of this ordinance shall be construed to create a trust in the proceeds of the sale of the Bonds herein authorized for the uses and purposes herein set forth, and the owners of the Bonds shall retain a lien on such proceeds until the same are applied in accordance with the provisions of this ordinance and of the governing Act. The provisions of this ordinance shall also be construed to create a trust in the portion of the Net Revenues herein directed to be set apart and paid into the Sinking Fund for the uses and purposes of said fund as in this ordinance set forth. The owners of the Bonds shall have all of the rights, remedies and privileges set forth under Indiana law if there be a default in the payment of the principal of or interest on any of the Bonds herein authorized or in the event the City shall fail or refuse to fix and collect sufficient rates and charges for said purposes, or shall fail or refuse to operate and maintain said system and to apply properly the revenues derived from the operation thereof.

(j) For purpose this Section 21, the term "lease" shall include any lease, contract, or other instrument conferring a right upon the City to use property in exchange for a periodic payments made from the revenues of the waterworks, whether the City desires to cause such to be, or by its terms (or its intended effects) is to be, (i) payable as rent, (ii) booked as an expense or an expenditure, or (iii) classified for accounting or other purposes as a capital lease, financing lease, operating lease, non-appropriation leases, installment purchase agreement or lease, or otherwise (including any combination thereof).

Section 22. Amendments with Consent of Bondholders. Subject to the terms and provisions contained in this Section and Section 21(h), and not otherwise, the owners of not less than sixty-six and two-thirds percent (66 2/3%) in aggregate principal amount of the Bonds issued pursuant to this ordinance and then outstanding shall have the right from time to time, to consent to and approve the adoption by the Common Council of the City of such ordinance or ordinances supplemental hereto or amendatory hereof, as shall be deemed necessary or desirable by the City for the purpose of modifying, altering, amending, adding to or rescinding any of the terms or provisions contained in this ordinance, or in any supplemental ordinance; provided, however, that if the Bonds or BANs are sold to the Authority as part of its DWSRF Program, the City shall obtain the prior written consent of the Authority; and provided further, that nothing herein contained shall permit or be construed as permitting:

- (a) An extension of the maturity, or mandatory sinking fund redemption date, of the principal of or interest on any Bond issued pursuant to this ordinance; or
- (b) A reduction in the principal amount of any Bond or the redemption premium or the rate of interest thereon; or
- (c) Except as otherwise noted in Section 2 with respect to the BANs, the creation of a lien upon or a pledge of the revenues or Net Revenues of the waterworks ranking prior to the pledge thereof created by this ordinance; or
- (d) A preference or priority of any Bond or Bonds issued pursuant to this ordinance over any other Bond or Bonds issued pursuant to the provisions of this ordinance; or
- (e) A reduction in the aggregate principal amount of the Bonds required for consent to such supplemental ordinance; or
- (f) A reduction in the Reserve Requirement.

If the owners of not less than sixty-six and two-thirds percent (66 2/3%) in aggregate principal amount of the Bonds outstanding at the time of adoption of such supplemental ordinance shall have consented to and approved the adoption thereof by written instrument to be maintained on file in the office of the Clerk of the City, no owner of any Bond issued pursuant to this ordinance shall have any right to object to the adoption of such supplemental ordinance or to object to any of the terms and provisions contained therein or the operation thereof, or in any manner to question the propriety of the adoption thereof, or to enjoin or restrain the Common Council of the City from adopting the same, or from taking any action pursuant to the provisions thereof. Upon the adoption of any supplemental ordinance pursuant to the provisions of this section, this ordinance shall be, and shall be deemed, modified and amended in accordance therewith, and the respective rights, duties and obligations under this ordinance of the City and all owners of Bonds then outstanding, shall thereafter be determined, exercised and enforced in accordance with this ordinance, subject in all respects to such modifications and amendments. Notwithstanding anything contained in the foregoing provisions of this ordinance, the rights and obligations of the City and of the owners of the Bonds authorized by this ordinance, and the terms and provisions of the Bonds and this ordinance, or any supplemental or amendatory ordinance, may be modified or altered in any respect with the consent of the City and the consent of the owners of all the Bonds then outstanding.

Section 23. Investment of Funds. (a) The Controller is hereby authorized to invest moneys pursuant to the provisions of this ordinance and IC 5-1-14-3 (subject to applicable requirements of federal law to insure such yield is then current market rate) to the extent necessary or advisable to preserve the exclusion from gross income of interest on the Bonds and BANs under federal law.

(b) The Controller shall keep full and accurate records of investment earnings and income from moneys held in the funds and accounts referenced herein. In order to comply with the provisions of the ordinance, the Controller is hereby authorized and directed to employ consultants or attorneys from time to time to advise the City as to requirements of federal law to preserve the tax exclusion. The Controller may pay any fees as operation expenses of the waterworks.

Section 24. Tax Covenants. In order to preserve the exclusion of interest on the Bonds and BANs from gross income for federal tax purposes under Section 103 of the Internal Revenue Code of 1986 as existing on the date of issuance of the Bonds or BANs, as the case may be ("Code"), and as an inducement to purchasers of the Bonds and BANs, the City represents, covenants and agrees that:

(a) The waterworks will be available for use by members of the general public. Use by a member of the general public means use by natural persons not engaged in a trade or business. No person or entity other than the City or another state or local governmental unit will use more than 10% of the proceeds of the Bonds or BANs or property financed by the Bond or BAN proceeds other than as a member of the general public. No person or entity other than the City or another state or local governmental unit will own property financed by Bond or BAN proceeds or will have any actual or beneficial use of such property pursuant to a lease, a management or incentive payment contract, arrangements such as take-or-pay or output contracts or any other type of arrangement that conveys other special legal entitlements and differentiates that person's or entity's use of such property from use by the general public, unless such uses in the aggregate relate to no more than 10% of the proceeds of the BANs or the Bonds, as the case may be. If the City enters into a management contract for the waterworks, the terms of the contract will comply with

IRS Revenue Procedure 2017-13, as it may be amended, supplemented or superseded for time to time, so that the contract will not give rise to private business use under the Code and the Regulations, unless such use in aggregate relates to no more than 10% of the proceeds of the Bonds or BANs, as the case may be.

(b) No more than 10% of the principal of or interest on the Bonds or BANs is (under the terms of the Bonds, BANs, this ordinance or any underlying arrangement), directly or indirectly, secured by an interest in property used or to be used for any private business use or payments in respect of any private business use or payments in respect of such property or to be derived from payments (whether or not to the City) in respect of such property or borrowed money used or to be used for a private business use.

(c) No more than 5% of the Bond or BAN proceeds will be loaned to any person or entity other than another state or local governmental unit. No more than 5% of the Bond or BAN proceeds will be transferred, directly or indirectly, or deemed transferred to a nongovernmental person in any manner that would in substance constitute a loan of the Bond or BAN proceeds.

(d) The City reasonably expects, as of the date hereof, that the Bonds and BANs will not meet either the private business use test described in paragraph (a) and (b) above or the private loan test described in paragraph (c) above during the entire term of the Bonds or BANs, as the case may be.

(e) No more than 5% of the proceeds of the Bonds or BANs will be attributable to private business use as described in (a) and private security or payments described in (b) attributable to unrelated or disproportionate private business use. For this purpose, the private business use test is applied by taking into account only use that is not related to any government

use of proceeds of the issue (Unrelated Use) and use that is related but disproportionate to any governmental use of those proceeds (Disproportionate Use).

(f) The City will not take any action nor fail to take any action with respect to the Bonds or BANs that would result in the loss of the exclusion from gross income for federal tax purposes on the Bonds or BANs pursuant to Section 103 of the Code, nor will the City act in any other manner which would adversely affect such exclusion. The City covenants and agrees not to enter into any contracts or arrangements which would cause the Bonds or BANs to be treated as private activity bonds under Section 141 of the Code.

(g) It shall not be an event of default under this ordinance if the interest on any Bond or BAN is not excludable from gross income for federal tax purposes or otherwise pursuant to any provision of the Code which is not currently in effect and in existence on the date of issuance of the Bonds or BANs, as the case may be.

(h) The City represents that it will rebate any arbitrage profits to the United States in accordance with the Code.

(i) These covenants are based solely on current law in effect and in existence on the date of delivery of such Bonds or BANs, as the case may be.

Section 25. Issuance of BANs. (a) The City, having satisfied all the statutory requirements for the issuance of its Bonds, may elect to issue its BAN or BANs pursuant to a Bond Anticipation Note Purchase Agreement ("Purchase Agreement") to be entered into between the City and the purchaser of the BAN or BANs. If the BANs are sold to the Authority as part of its DWSRF Program, the Financial Assistance Agreement shall serve as the Purchase Agreement. The Common Council hereby authorizes the issuance and execution of the BAN or BANs in lieu of initially issuing the Bonds to provide interim financing for the Project until permanent financing

becomes available. It shall not be necessary for the City to repeat the procedures for the issuance of its Bonds, as the procedures followed before the issuance of the BAN or BANs are for all purposes sufficient to authorize the issuance of the Bonds and the use of the proceeds to repay the BAN or BANs.

(a) The Mayor and the Controller are hereby authorized and directed to execute a Purchase Agreement or Financial Assistance Agreement (and any amendments made from time to time) in such form or substance as they shall approve acting upon the advice of counsel. The Mayor, the Clerk and the Controller may also take such other actions or deliver such other certificates as are necessary or desirable in connection with the issuance of the BANs or the Bonds and the other documents needed for the financing as they deem necessary or desirable in connection therewith.

Section 26. Noncompliance with Tax Covenants. Notwithstanding any other provisions of this ordinance, the covenants and authorizations contained in this ordinance ("Tax Sections") which are designed to preserve the exclusion of interest on the Bonds and BANs from gross income under federal law ("Tax Exemption") need not be complied with if the City receives an opinion of nationally recognized bond counsel that any Tax Section is unnecessary to preserve the Tax Exemption.

Section 27. Conflicting Ordinances. All ordinances and parts of ordinances in conflict herewith are hereby repealed; provided that the adoption of this ordinance shall not be construed as amending or repealing the ordinances authorizing the Outstanding Bonds or as adversely affecting the rights of the holders of the Outstanding Bonds.

Section 28. Headings. The headings or titles of the several sections shall be solely for convenience of reference and shall not affect the meaning, construction or effect of this ordinance.

Section 29. Effective Date. This ordinance shall be in full force and effect from and after its passage and execution by the Mayor.

Passed and adopted by the Common Council of the City of Mishawaka, Indiana this _____ day of _____, 2020.

COMMON COUNCIL OF THE CITY OF
MISHAWAKA, INDIANA

Gregg A. Hixenbaugh Presiding Officer

Attest:

Deborah S. Block, IAMC, MMC, City Clerk

Presented by me to the Mayor of the City of Mishawaka, Indiana on the _____ day of _____, 2020, at _____ .m.

Deborah S. Block, IAMC, MMC, City Clerk

This ordinance approved and signed by me, the Mayor of the City of Mishawaka, Indiana, on the ____ day of _____, 2020, at _____ .m.

David A. Wood, Mayor

EXHIBIT A

Description of Project

EXHIBIT B

- Rehabilitation of Storage Tank 1 North. The rehabilitated tank will provide a more stable water supply to the Central Pressure District.
- New 8 million gallon per day Juday Creek Wellfield and Water Treatment Plant. The new wellfield and water treatment plant will consist of five wells with well house buildings, pressure filters, chemical systems, high service pumps, 24,000 square foot water treatment plant building, 0.5 million gallon water storage tank, on-site generator for backup power, and water main. It will provide the University Park Pressure District with a redundant source of water and treatment. It will also allow the existing water treatment plants to be taken offline for rehabilitation.
- New 1.5 million gallon Gumwood Water Tower. It will provide the University Park Pressure District with additional water storage that is needed due to area growth and increased water pressure to improve service at medical, commercial and multi-family residential complexes.
- Improvements of two existing pressure vaults to supply water from the University Park Pressure District to the Central Pressure District.

EXHIBIT B

Form of Financial Assistance Agreement

STATE OF INDIANA

DRINKING WATER REVOLVING LOAN PROGRAM

FINANCIAL ASSISTANCE AGREEMENT made as of this day of
2020 by and between the Indiana Finance Authority (the "Finance Authority"), a body politic and
corporate, not a state agency but an independent instrumentality of the State of Indiana (the
"State") and the City of Mishawaka, Indiana (the "Participant"), a political subdivision as defined
in I.C. 5-1.2-2-57, operating its water utility under I.C. 8-1.5, witnesseth:

WHEREAS, the State's Drinking Water Revolving Loan Program (the "Drinking Water
SRF Program") has been established in accordance with the federal Safe Drinking Water Act and
any regulations promulgated thereunder, and pursuant to I.C. 5-1.2-10 (the "Drinking Water SRF
Act"), which Drinking Water SRF Act also establishes the drinking water revolving loan fund (the
"Drinking Water SRF Fund"); and

WHEREAS, pursuant to the Drinking Water SRF Act, the State was authorized to fund the
Drinking Water SRF Program with federal capitalization grants, together with required state
matching funds therefor, and to operate the Drinking Water SRF Program, and prior to May 15,
2005 so funded and operated the Drinking Water SRF Program; and

WHEREAS, pursuant to Public Law 235 - 2005, by operation of law and effective May
15, 2005, the Finance Authority has become the successor to the State in all matters related to the
Drinking Water SRF Program (including use and acceptance of federal capitalization grants and
required state matching funds and operation of the Drinking Water SRF Program); and

WHEREAS, the Participant is a duly existing political subdivision of the State, lawfully
empowered to undertake all transactions and execute all documents mentioned or contemplated
herein; and

WHEREAS, the Participant has previously entered into a (i) Financial Assistance
Agreement with the Finance Authority, dated as of September 15, 2009 to borrow money from the
Wastewater SRF Program, to construct and acquire separate projects as described and defined
therein and (ii) Financial Assistance Agreement with the Finance Authority, dated as of October
29, 2018 to borrow money from the Drinking Water SRF Program, to construct and acquire
separate projects as described and defined therein (collectively, the "Prior Agreements"); and

WHEREAS, the Participant has determined to undertake a drinking water system project
(as more fully described herein, the "Project") and to borrow money from the Drinking Water SRF
Program to construct and acquire the Project; and

WHEREAS, the Finance Authority and the Participant desire to set forth the terms of such financial assistance as hereinafter provided.

NOW THEREFORE, in consideration of the mutual covenants herein set forth, the Finance Authority and the Participant agree as follows:

ARTICLE I

DEFINITIONS

Section 1.01. Definitions. The following terms shall, for all purposes of this Agreement, have the following meaning:

“Agency” shall mean the United States Environmental Protection Agency or its successor.

“Asset Management Program” means programs, plans and documentation (including a Fiscal Sustainability Plan) that demonstrates that the Participant has the financial, managerial, technical, and legal capability to operate and maintain its Drinking Water System and which is consistent with SRF Policy Guidelines including applicable requirements of the Drinking Water SRF Act.

“Authorizing Instrument(s)” shall mean the separate trust indenture(s) of the Participant entered into with a corporate trustee or the detailed resolution(s) or ordinance(s) of the governing body of the Participant pursuant to which the Bonds are issued in accordance with State law.

“Authorized Representative” shall mean the Controller of the Participant or such other officer, official, or representative of the Participant duly authorized to act for and on behalf of the Participant as provided for herein.

“Bond” or “Bonds” shall mean the instrument(s) which evidence(s) the Loan, as authorized by the Authorizing Instrument and containing the terms set forth in Section 2.02 of this Agreement.

“Bond Fund” shall mean the separate and segregated fund or account established and created by the Participant pursuant to the Authorizing Instrument from which payment of the principal of and interest on the Bonds is required to be made by the Participant.

“Business Day” shall mean any day other than a Saturday, Sunday or State legal holiday or any other day on which financial institutions in the State are authorized by law to close and to remain closed.

“Code” shall mean the Internal Revenue Code of 1986, as amended and supplemented from time to time, together with the regulations related thereto.

“Commission” shall mean the Indiana Utility Regulatory Commission created under I.C. 8-1-1-2 or its successor.

“Construction Fund” shall mean the separate and segregated fund or account established and created by the Participant pursuant to the Authorizing Instrument to receive proceeds of the Bonds and from which Eligible Costs of the Project may be paid by the Participant.

“Credit Instrument” means a letter of credit, surety bond, liquidity facility, insurance policy or comparable instrument furnished by a Credit Provider that is used by the Participant to meet all or a portion of any debt service reserve requirement securing the Bonds or any other bonds payable from the revenues of the Drinking Water System, which bonds are on a parity with the Bonds.

“Credit Provider” means a bank, insurance company, financial institution or other entity providing a Credit Instrument.

“Department” shall mean the Indiana Department of Environmental Management created under I.C. 13-13-1-1 or its successor.

“Deposit Agreement” shall mean an agreement between the Participant and the Deposit Agreement Counterparty in such form as from time to time determined by the Finance Authority pursuant to which (a) the Participant’s Bond Fund (including any reserve account established and created by the Participant pursuant to the Authorizing Instrument related thereto) shall be held by such Deposit Agreement Counterparty and available for payment of the Bonds and any other similar obligations of the Participant that are payable from the Bond Fund regardless whether they are on a parity basis, (b) such Deposit Agreement Counterparty serves as the paying agent for the Bonds and any other such similar obligations of the Participant that are payable from the Bond Fund, and (c) the Participant’s Construction Fund may be held by such Deposit Agreement Counterparty upon any Loan disbursement by the Finance Authority to it from time to time.

“Deposit Agreement Counterparty” shall mean the financial institution that enters into a Deposit Agreement with the Participant, which financial institution shall be approved by the Finance Authority and may be replaced by the Finance Authority from time to time.

“Director of Environmental Programs” shall mean the person designated by the Finance Authority as authorized to act as the Director of Environmental Programs (which designation includes such Director’s assumption of the duties previously assigned to the Drinking Water SRF Program Representative and the Drinking Water SRF Program Director) and where not limited, such person’s designee.

“Disbursement Agent” shall mean the party disbursing the Loan to or for the benefit of the Participant, which shall be the Trustee unless amounts are held in the Construction Fund, in which case the Disbursement Agent shall thereafter be the Deposit Agreement Counterparty as the party disbursing amounts that are held in the Construction Fund unless otherwise agreed by the Finance Authority.

“Disbursement Request” shall mean a request for a disbursement of the Loan made by an Authorized Representative in such form as the Finance Authority may from time to time prescribe.

“Drinking Water SRF Fund” shall mean the drinking water revolving loan fund as established by I.C. 5-1.2-10-2.

“Drinking Water SRF Indenture” shall mean the Fourth Amended and Restated Drinking Water SRF Trust Indenture, dated as of September 1, 2019 between the Finance Authority (as successor by operation of law to the State in all matters related to the Drinking Water SRF Program) and the Trustee, as amended and supplemented from time to time.

“Drinking Water System” shall mean all, or any part of, the system for the provision to the public of water for human consumption through pipes and other constructed conveyances that:

- (1) has at least fifteen (15) service connections; or
- (2) regularly serves at least twenty-five (25) individuals;

and as further defined and described in I.C. 13-11-2-177.3 and SRF Policy Guidelines, as amended and supplemented from time to time.

“Eligible Cost” shall mean and include, whether incurred before or after the date of this Agreement, all costs which have been incurred and qualify for Financial Assistance, including engineering, financing and legal costs related thereto.

“Finance Authority” shall mean the Indiana Finance Authority, a body politic and corporate, not a state agency but an independent instrumentality of the State.

“Finance Authority Bonds” shall mean any Finance Authority State Revolving Fund Program Bonds or other similar obligations of the Finance Authority issued as a part of the Drinking Water SRF Program within the meaning of the Drinking Water SRF Indenture.

“Financial Assistance” shall mean the financial assistance authorized by the Safe Drinking Water Act, including the Loan.

“Fiscal Sustainability Plan” means in connection with a project that provides for the repair, replacement, or expansion of an existing Drinking Water System, a plan that is consistent with SRF Policy Guidelines including applicable requirements of the Drinking Water SRF Act and includes (a) an inventory of critical assets that are a part of the Drinking Water System, (b) an evaluation of the condition and performance of inventoried assets or asset groupings; (b) a certification that the Participant has evaluated and will be implementing water and energy conservation efforts as part of the plan; and (d) a plan for maintaining, repairing, and, as necessary, replacing the Drinking Water System and a plan for funding such activities.

“Loan” shall mean the purchase of the Bonds by the Finance Authority to finance the planning, designing, constructing, renovating, improving and expanding of the Participant’s Drinking Water System or refinance an existing debt obligation where such debt was incurred and building of such systems began after July 1, 1993, but does not mean the provision of other Financial Assistance.

“Loan Reduction Payment” shall mean in any circumstances where there is a balance (inclusive of Loan proceeds and any earnings) in the Construction Fund, any action causing such balance to be applied to a reduction in the maximum aggregate amount of the Loan outstanding other than pursuant to regularly scheduled principal payments or optional redemptions applicable to the Bonds. A Loan Reduction Payment shall not be applicable unless Loan amounts are held in the Construction Fund.

“Non-Use Close-out Date” shall mean that date which is the earlier of (a) the first date as of which the full amount of the Loan has been disbursed on a cumulative basis (which shall also be deemed to have occurred when and if such amounts have been deposited in the Participant’s Construction Fund) or (b) the date as of which the Participant binds itself that no further Loan disbursements will be made under this Agreement.

“Non-Use Fee” shall mean a fee in an amount determined by the Finance Authority charged to compensate it for costs and expenses within the Drinking Water SRF Program. Such amount shall be the greater of (A) the product of the undrawn balance of the Loan on each applicable Non-Use Assessment Date multiplied by one percent (1%) or (B) One Thousand Dollars (\$1,000). Such fee shall apply and be payable under Section 5.09 herein with respect to each Non-Use Assessment Date until the Non-Use Close-out Date shall occur. A Non-Use Fee shall not be applicable if the full amount of the Loan has been disbursed and deposited in the Participant’s Construction Fund by the Non-Use Assessment Date.

“Non-Use Assessment Date” shall mean [1, 20] and the first day of each sixth (6th) calendar month thereafter unless and until the Non-Use Close-out Date occurs in advance of any such Non-Use Assessment Date.

“Operation and Maintenance” shall mean the activities required to assure the continuing dependable and economic function of the Drinking Water System, including maintaining compliance with primary and secondary drinking water standards, as follows:

(1) Operation shall mean the control and management of the united processes and equipment which make up the Drinking Water System, including financial and personnel management, records, reporting, laboratory control, process control, safety and emergency operation planning and operating activities.

(2) Maintenance shall mean the preservation of the functional integrity and efficiency of equipment and structures by implementing and maintaining systems of preventive and corrective maintenance, including replacements.

“Plans and Specifications” shall mean the detailed written descriptions of the work to be done in undertaking and completing the Project, including the written descriptions of the work to

be performed and the drawings, cross-sections, profiles and the like which show the location, dimensions and details of the work to be performed.

“**Preliminary Engineering Report**” shall mean the information submitted by the Participant that is necessary for the Finance Authority to determine the technical, economic and environmental adequacy of the proposed Project.

“**Project**” shall mean the activities or tasks identified and described in Exhibit A to this Agreement, and incorporated herein, as amended or supplemented by the Participant and consented to by the Finance Authority, for which the Participant may expend the Loan.

“**Purchase Account**” shall mean the account by that name created by the Drinking Water SRF Indenture and held as part of the Drinking Water SRF Fund.

“**Safe Drinking Water Act**” shall mean the Safe Drinking Water Act, 42 U.S.C. §§ 300f et seq. and other laws, regulations and guidance supplemental thereto, as amended and supplemented from time to time including the 2014 Appropriations Act.

“**SRF Policy Guidelines**” shall mean guidance of general applicability (as from time to time published, amended and supplemented by the Finance Authority) pertaining to participants utilizing financial assistance in connection with their projects funded in whole or in part through the Drinking Water SRF Program.

“**State**” shall mean the State of Indiana.

“**Substantial Completion of Construction**” shall mean the day on which the Finance Authority (or if designated by the Finance Authority, the Department) determines that all but minor components of the Project have been built, all equipment is operational and the Project is capable of functioning as designed.

“**System Development Charges**” shall mean the proceeds and balances from any non-recurring charges such as tap fees, subsequent connector fees, capacity or contribution fees, and other similar one-time charges applicable to the Drinking Water System that are available for deposit under the Authorizing Instrument.

“**Trustee**” shall mean The Bank of New York Mellon Trust Company, N.A., Indianapolis, Indiana, in its capacity as trustee or its successor under the Drinking Water SRF Indenture.

“**2014 Appropriations Act**” shall mean the Consolidated Appropriations Act, 2014 (also known as H.R. 3457), and other laws, regulations and guidance supplemental thereto (including the Safe Drinking Water Act), as amended and supplemented from time to time.

(End of Article I)

ARTICLE II

PURPOSE OF BORROWING AND LOAN TERMS

Section 2.01. Amount; Purpose. The Finance Authority agrees to Loan an amount not to exceed [] Dollars (\$[]) in aggregate principal amount to the Participant as Financial Assistance to pay for the Eligible Costs, as hereinafter described, of the Project on, and subject to, the terms and conditions contained herein. The Loan shall be used only to pay the following Eligible Costs: (a) eligible planning services for the production of a Preliminary Engineering Report ("Planning"), (b) eligible design services for the production of Plans and Specifications ("Design") and (c) eligible construction costs, including financing and legal costs ("Construction"). The Loan shall be funded solely from available proceeds of the Finance Authority Bonds contained in the Purchase Account or from other sources that the Finance Authority may, in its sole discretion, designate. The Loan is evidenced by the Bonds executed and delivered by the Participant contemporaneously herewith. The Bonds shall be in fully registered form, with the Finance Authority registered as the registered owner. So long as the Finance Authority is the registered owner, the principal of and redemption premium, if any, and interest on the Bonds shall be paid to the Trustee by a wire transfer referenced as follows: The Bank of New York, ABA 021 000 018, For Credit to 610026840C, Account Name: City of Mishawaka Drinking Water SRF, Attn: Derick Rush. The Participant agrees to undertake and complete the Project and to receive and expend the Loan proceeds in accordance with this Agreement.

Section 2.02. The Bonds.

(a) Until paid, the Bonds will bear interest at the per annum rate of [] percent ([]%). Such interest shall be calculated on the basis of a 360-day year comprised of twelve 30-day months, and be as provided in I.C. 5-1.2-10-15 and -20. Interest, if any, on the Bonds will be payable on January 1 and July 1 of each year, commencing [] 1, 20[]. The Bonds will be in the aggregate principal amount of [] Dollars (\$[]). Subject to Section 2.05 and 2.06 herein, the Bonds will mature on January 1 and July 1 of each of the years set forth in, and at the principal amount set opposite each such month and year set forth in the schedule contained in the attached Exhibit B to this Agreement (which is hereby incorporated by reference); provided, however, notwithstanding the foregoing or the terms of the Bonds to the contrary, no maturity of Bonds shall extend beyond the date which is thirty-five (35) years after the date of this Agreement. If the maturity date for any Bonds is beyond such date, unless otherwise agreed to, such Bonds, together with accrued and unpaid interest thereon, will be due and payable on such date.

(b) The Bonds will be subject to redemption by the Participant as provided in the Authorizing Instrument; provided however that in no event shall the Participant exercise any provision contained in the Authorizing Instrument or the Bonds permitting a redemption of the Bonds at the option of the Participant unless and until such has been consented by the Authority. The Loan, and the Bonds evidencing it, will be subject to payment by the Participant as provided in this Agreement.

(c) The form and other terms of the Bonds will be in conformity with the Authorizing Instrument.

(d) The additional terms contained in the attached Exhibit D are applicable to this Loan (as and to the extent set forth in Exhibit D) to the same effect as if such were set forth in this section.

Section 2.03. Disbursement Conditions. Each of the following shall be a condition precedent to the disbursement of the Loan or any portion thereof (including from the Construction Fund):

(a) (1) With respect to procurement of professional services related to the Project to be paid from Loan proceeds, the Participant shall have complied with applicable State law and SRF Policy Guidelines. (2) With respect to procurement of all other goods and services related to the Project to be paid from Loan proceeds, the Participant shall have complied with I.C. 36-1-12 and SRF Policy Guidelines.

(b) No representation, warranty or covenant of the Participant contained in this Agreement or in any paper executed and delivered in connection with the transactions contemplated by this Agreement shall be false or inaccurate in any material respect.

(c) The Participant shall undertake and faithfully perform each of its obligations, agreements and covenants contained in this Agreement, the Authorizing Instrument and the Bonds.

(d) There shall be available to the Finance Authority uncommitted funds in an amount sufficient to satisfy the Finance Authority's obligations hereunder from the proceeds of Finance Authority Bonds in the Purchase Account or from other sources that the Finance Authority may, in its sole discretion, designate; provided however, once Loan proceeds have been deposited in the Construction Fund, such condition shall be deemed satisfied.

(e) The Participant shall have undertaken all actions necessary to comply with and satisfy the conditions and requirements for a Loan secured with money made available from the Drinking Water SRF Fund as set forth in federal and State statutes, rules and regulations, including I.C. 5-1.2-10, SRF Policy Guidelines, the Safe Drinking Water Act and 40 C.F.R. Part 35.

(f) Prior to making any Loan disbursement to pay any Construction costs, the Project shall have been approved by the State's Historical Preservation Officer in a manner consistent with the policies and practices of the Drinking Water SRF Program (the "Historical Preservation Approval"). Notwithstanding any provision of this Agreement to the contrary, in the event a Historical Preservation Approval has not been given within four (4) months after the date of this Agreement, the Finance Authority may, in its sole discretion, (i) reduce the aggregate amount of the Loan to the amount then disbursed and outstanding under this Agreement and (ii) if any amounts are held in the Construction Fund,

require a Loan Reduction Payment pursuant to Section 2.06 herein as if it were a date that was three (3) years after the dated date of the Bonds. Upon giving notice to the Participant of such action, no further Loan disbursement (including from the Construction Fund) may be made under this Agreement unless consented to by the Finance Authority.

(g) In the event the Bonds are payable from rates and charges of the Drinking Water System and if requested by the Finance Authority, the Participant shall provide evidence satisfactory to the Finance Authority demonstrating that such rates and charges are at a level adequate to produce and maintain sufficient net revenue after providing for the proper Operation and Maintenance of the Drinking Water System, on a proforma basis consistent with SRF Policy Guidelines, to provide 1.25x coverage on all obligations of the Drinking Water System (including the Bonds).

Section 2.04. Disbursement Procedures. Loan proceeds (including any held from time to time in the Construction Fund) shall be disbursed to the Participant by the Disbursement Agent for actual Eligible Costs incurred with respect to the Project. The Finance Authority may, in its discretion, cause Loan disbursements to be made (a) directly to the person or entity identified in the Disbursement Request to whom payment is due, or (b) if advised in writing by the Participant that I.C. 36-1-12-14 or a similar law applies to the Project, to the Participant for purposes of collecting retainage, or some combination thereof. Any Loan proceeds in excess of the amount subject to retainage controlled by the Participant will be immediately remitted to the person or entity to whom payment is due, no later than three (3) Business Days after receipt or the date such Loan proceeds are no longer subject to retainage. The Finance Authority may, in its discretion, cause Loan disbursements to be made from time to time, in whole or in part, to the Participant's Construction Fund for disbursement consistent with this Agreement. Loan disbursements shall not be made more frequently than monthly and shall only be made following the submission of a Disbursement Request to the Finance Authority. Disbursement Requests shall be approved by the Director of Environmental Programs prior to submission to the Disbursement Agent for a Loan disbursement. Disbursement Requests shall be numbered sequentially, beginning with the number 1.

Section 2.05. Effect of Disbursements. Loan disbursements made to or for the benefit of the Participant shall be deemed to be a purchase of the Bonds in such amounts and with such maturities as achieves as level debt service as practicable, and with no maturity longer than the original maturity schedule; provided that any principal payments originally scheduled under Section 2.02 herein as being due prior to one year after Substantial Completion of Construction shall first be deemed to be a purchase of the Bonds in order of maturity. The deposit of Loan proceeds in the Construction Fund shall be deemed to be a purchase of the Bonds. Interest on the Loan commences on disbursement of the Loan to or for the benefit of the Participant (including any amounts disbursed to the Construction Fund) by the Finance Authority and the Bonds shall be deemed to be purchased in the full amount thereof. Each disbursement (including any amounts disbursed from the Construction Fund) shall be made pursuant to a Disbursement Request. In the event any Loan disbursement (including any amounts disbursed from the Construction Fund) shall be made in excess of Eligible Costs, such excess disbursements shall be immediately paid by the Participant to the Disbursement Agent (and if made from any amounts held in the Construction Fund, shall be immediately deposited by the Participant into such Construction Fund) and thereafter may, subject to the terms and conditions set forth in this Agreement, be applied thereafter to pay Eligible Costs of the Project by the Participant.

Section 2.06. Acknowledgment of Amount of Loan; Final Disbursement. (a) Within 30 days after any request by the Finance Authority from time to time, the Participant shall execute and deliver to the Finance Authority an acknowledgment in the form prescribed by the Finance Authority which acknowledges the outstanding principal of and interest on the Bonds. Unless the Finance Authority consents in writing, no Loan disbursement shall be made more than one year after Substantial Completion of Construction. After Substantial Completion of Construction, upon the request of the Finance Authority, the Participant shall replace, at its expense, the Bonds with substitutes issued pursuant to the Authorizing Instrument to evidence the outstanding principal under the Loan.

(b) In the event there remains a balance (inclusive of Loan proceeds and any earnings) in the Construction Fund on the date that is the earlier of (i) one year after Substantial Completion of Construction or (ii) three (3) years after the dated date of the Bonds (or in either such circumstance, such later date as the Finance Authority may approve in its discretion), the Participant agrees to make a Loan Reduction Payment to the Finance Authority within 10 days after any Finance Authority written demand. Any Loan Reduction Payment shall be applied to pay principal in such amounts and with such maturities as achieves as level debt service as practicable consistent with methodology prescribed in the Authorizing Instrument and as originally applied to the Bonds, and with no maturity longer than the original maturity schedule; provided that any principal payments originally scheduled under Section 2.02 herein as being due prior to the Loan Reduction Payment shall be unaffected by such payment. If the Authorizing Instrument permits the Participant to apply Bond proceeds to pay interest accruing on or before Substantial Completion of Construction, the Participant may seek to reimburse itself for such interest costs it has paid pursuant to a Disbursement Request provided. If the Participant fails to make such Loan Reduction Payment by such date, the Finance Authority and Deposit Agreement Counterparty are authorized to cause any balance held in the Construction Fund to be so applied without further direction and authorization from the Participant. Notwithstanding the foregoing, if requested by the Finance Authority, in lieu of the Participant making a Loan Reduction Payment, the Finance Authority may in its discretion require the Participant to hold any remaining balance (inclusive of Loan proceeds and any earnings) in the Construction Fund until such amounts may be applied on the first optional redemption date applicable to the Bonds, and upon any such request, the Participant agrees to cause such amounts to be so held and applied on such date.

(End of Article II)

ARTICLE III
REPRESENTATIONS, WARRANTIES AND COVENANTS
OF THE PARTICIPANT

Section 3.01. Planning, Design and Construction Covenants. The Participant hereby covenants and agrees with the Finance Authority that the Participant will:

(a) Provide information as requested by the Finance Authority to determine the need for, or to complete any necessary, environmental review or analysis.

(b) Comply with the procurement procedures and affirmative action requirements contained in SRF Policy Guidelines in the Planning, Design and Construction of the Project to the extent that such are to be paid from Loan proceeds.

(c) With respect to prime and first tier contract awards, report minority and women business enterprise utilization in the Planning, Design and Construction of the Project, to the extent that such are to be paid from Loan proceeds, by executing and delivering Agency Form SF 5700-52 to the Finance Authority whenever any agreements or subagreements are awarded. (These reports must be submitted on regular reporting cycles consistent with SRF Policy Guidelines commencing after such agreement or subagreement is awarded.)

(d) Comply with all applicable federal, State and local statutes, rules and regulations relating to the acquisition and construction of the Drinking Water System.

(e) In the event Construction is to be paid from Loan proceeds, prior to an award of any contract for Construction of the Project, obtain a construction permit from the Department and receive the written approval of the Finance Authority of the Preliminary Engineering Report.

(f) Obtain the property rights necessary to construct the Drinking Water System and, in procuring any such rights comply with federal and State law.

(g) In the event Construction is to be paid from Loan proceeds, comply with the federal Davis-Bacon Act, codified at 40 U.S.C. 276a-276a-5 unless separately waived by the Finance Authority.

(h) In the event Construction is to be paid from Loan proceeds, execute and deliver to the Finance Authority Agency Form 4700-4 ("Pre-award Compliance Review Report for Wastewater Treatment Construction Grants") and such other forms as may be required by the Clean Water Act or SRF Policy Guidelines.

(i) In the event Construction is to be paid from Loan proceeds, follow guidance issued by the Finance Authority in procuring contracts for Construction, including (1) submission to the Finance Authority of Project change orders, (2) obtaining approval from

the Director of Environmental Programs of any Project change order which significantly changes the scope or Design of the Project or, when taking into account other change orders and contracts, are reasonably expected to result in expenditures in an amount greater than the Loan, (3) receiving approval from the Director of Environmental Programs prior to the award of any contract for Construction and (4) receiving authorization from the Director of Environmental Programs prior to initiating procurement of Construction of the Project.

(j) In the event Construction is to be paid from Loan proceeds, before awarding Construction contracts, receive approval of the Director of Environmental Programs for the user charge system (including any use ordinance and interlocal agreement) associated with the Project.

(k) In the event Construction is to be paid from Loan proceeds, cause the Project to be constructed in accordance with the Preliminary Engineering Report and the Plans and Specifications, using approved contract papers.

(l) Permit the Finance Authority and its agents to inspect from time to time (1) the Project, (2) the Drinking Water System and (3) the books and other financial records of the Drinking Water System, including the inspections described in SRF Policy Guidelines. Construction contracts shall provide that the Finance Authority or its agents will have access to the Project and the work related thereto and that the Participant's contractor will provide proper facilities for such access and inspection. All files and records pertaining to the Project shall be retained by the Participant for at least six years after Substantial Completion of Construction.

(m) Upon Substantial Completion of Construction and when requested by the Finance Authority, provide audited reports to the Finance Authority to permit the Finance Authority to determine that the Loan proceeds have been used in compliance with this Agreement.

(n) In the event Construction is to be paid from Loan proceeds, within one year of Substantial Completion of Construction, consistent with SRF Policy Guidelines, certify to the Finance Authority that the Project meets performance standards, or if not met, (1) submit to the Finance Authority (or if directed by the Finance Authority, to the Department) a corrective action plan and (2) promptly and diligently undertake any corrective action necessary to bring the Project into compliance with such standards.

(o) In the event Construction is to be paid from Loan proceeds, within one year of Substantial Completion of Construction, provide as-built plans for the Project to the Finance Authority (or if directed by the Finance Authority, to the Department).

Section 3.02. General Covenants. The Participant hereby covenants and agrees with the Finance Authority that the Participant will:

(a) Comply with all applicable federal, State and local statutes, rules and regulations relating to Operation and Maintenance.

(b) (1) Own, operate and maintain the Project and the Drinking Water System for their useful life, or cause them to be operated and maintained for their useful life; (2) at all times maintain the Drinking Water System in good condition and operate it in an efficient manner and at a reasonable cost; and (3) not sell, transfer, lease or otherwise encumber the Drinking Water System or any portion thereof or any interest therein without the prior written consent of the Finance Authority

(c) Obtain and maintain the property rights necessary to operate and maintain the Drinking Water System, and in procuring any such rights, comply with federal and State law.

(d) Acquire and maintain insurance coverage acceptable to the Finance Authority, including fidelity bonds, to protect the Drinking Water System and its operations. All insurance shall be placed with responsible insurance companies qualified to do business under State law. Insurance proceeds and condemnation awards shall be used to replace or repair the Drinking Water System unless the Finance Authority consents to a different use of such proceeds or awards.

(e) Establish and maintain the books and other financial records of the Project (including the establishment of a separate account or subaccount for the Project) in accordance with (1) generally accepted governmental accounting principles, as promulgated by the Government Accounting Standards Board (including GASB No. 34 standards relating to the reporting of infrastructure) and (2) the rules, regulations and guidance of the State Board of Accounts.

(f) Provide to the Finance Authority such periodic financial and environmental reports as it may request from time to time, including (1) annual operating and capital budgets and (2) such other information requested or required of the Finance Authority or the Participant by the Agency.

(g) Provide to the Finance Authority audited financial statements of the Participant inclusive of the activities of the Drinking Water System, commencing with financial statements for a calendar year period that ends not more than two (2) years after the date of this Agreement (and for each calendar year period that ends every two (2) years thereafter until the Loan has been repaid), which audit (i) shall have been performed by the Indiana State Board of Accounts or by an independent public accountant and (ii) shall be submitted to the Finance Authority no later than nine (9) months following the end of the calendar year period to which such audit pertains.

(h) Develop, certify, implement and maintain an Asset Management Program (including a Fiscal Sustainability Plan) of the Participant that meets SRF Policy Guidelines including applicable requirements of the Drinking Water SRF Act. The Participant

acknowledges that its agreement to develop, certify, implement and maintain an Asset Management Program (including a Fiscal Sustainability Plan) as provided in this subsection was a condition of the Loan. Unless the Participant's Asset Management Program (including a Fiscal Sustainability Plan) was certified prior to the date of this Agreement, the Participant agrees to submit a certification (on and in a form as provided by the Finance Authority) related to the Participant's Asset Management Program (including a Fiscal Sustainability Plan) prior to submitting its request for a final Loan disbursement related to the Project. Over the term of the Loan, the Participant further agrees to continue to update, implement and maintain the Participant's Asset Management Program (including a Fiscal Sustainability Plan) to assure it has the financial, managerial, technical, and legal capability to operate and maintain its Drinking Water System consistent with SRF Policy Guidelines including applicable requirements of the Drinking Water SRF Act.

(i) Provide notice to the Finance Authority under the circumstances contemplated, and undertake inspections as required, by SRF Policy Guidelines.

(j) (1) Establish and maintain just and equitable rates and charges for the use of and the service rendered by the Drinking Water System, to be paid by the owner of each and every lot, parcel of real estate or building that is connected with and uses the Drinking Water System, or that in any way uses or is served by the Drinking Water System, (2) establish, adjust and maintain rates and charges at a level adequate to produce and maintain sufficient revenue (when determined including user and other charges, fees, income or revenues available to the Participant, provided that to the extent permitted by law System Development Charges shall be excluded when determining if such are sufficient) to provide for the proper Operation and Maintenance of the Drinking Water System, to comply with and satisfy all covenants contained herein and to pay all obligations of the Drinking Water System and of the Participant with respect thereto, and (3) if and to the extent Bonds are payable from property taxes, levy each year a special ad valorem tax upon all property located in the boundaries of the Participant, to pay all obligations of the Participant with respect thereto.

(k) If the Bonds are payable from the revenues of the Drinking Water System, not borrow any money, enter into any contract or agreement or incur any other liabilities in connection with the Drinking Water System without the prior written consent of the Finance Authority if such undertaking would involve, commit or use the revenues of the Drinking Water System; provided that the Participant may authorize and issue additional obligations, payable out of the revenues of its Drinking Water System, ranking on a parity with the Bonds for the purpose of financing the cost of future additions, extensions and improvements to the Drinking Water System, or to refund obligations of the Drinking Water System, subject to the conditions, if any, in the Authorizing Instrument.

(l) Comply with the Civil Rights Act of 1964, as amended, 42 U.S.C. Section 2000d et seq., the Age Discrimination Act, as amended, Public Law 94-135, Section 504 of the Rehabilitation Act of 1973, as amended (including Executive Orders

11914 and 11250), 29 U.S.C. Section 794, Section 13 of the Federal Water Pollution Control Act Amendments of 1972, Public Law 92-500, Executive Order 11246 regarding equal employment opportunity, and Executive Orders 11625 and 12138.

(m) Undertake all actions necessary to investigate all potential, material claims which the Participant may have against other persons with respect to the Drinking Water System and the Project and take whatever action is necessary or appropriate to (1) recover on any actionable, material claims related to the Project or the Planning, Design or Construction thereof, (2) meet applicable Project performance standards and (3) otherwise operate the Drinking Water System in accordance with applicable federal, State and local law.

(n) Not modify, alter, amend, add to or rescind any provision of the Authorizing Instrument without the prior written consent of the Finance Authority.

(o) In the event the Participant adopts an ordinance or resolution to refund the Bonds, within 5 days of the adoption of the ordinance or resolution, provide written notice to the Finance Authority of the refunding. Any refunding of the Bonds shall only be undertaken by the Participant with the prior written consent of the Finance Authority.

(p) In any year in which total expenditures of Federal financial assistance received from all sources exceeds \$750,000 the Participant shall comply with the Federal Single Audit Act (SAA) of 1984, as amended by the Federal Single Audit Act Amendments of 1996 (see 2 CFR 200 Subpart F) and have an audit of their use of Federal financial assistance. The Participant agrees to provide the Finance Authority with a copy of the SAA audit within 9 months of the audit period.

(q) Inform the Finance Authority of any findings and recommendations pertaining to the SRF program contained in an audit of 2 CFR 200 Subpart F (a/k/a "Super Circular") matters in which SRF Federal financial assistance was less than \$750,000.

(r) Initiate within 6 months of the audit period corrective actions for those audit reports with findings and recommendations that impact the SRF financial assistance.

(s) Notwithstanding anything in the Authorizing Instrument related to the Bonds (or in any authorizing instrument related to any other outstanding bonds payable from the revenues of the Drinking Water System which are on a parity with the Bonds) to the contrary, in the event any Credit Provider that has provided a Credit Instrument fails to be rated on a long term basis at least "A-/A3" by Standard & Poor's Ratings Services, a Division of the McGraw-Hill Companies, and Moody's Investors Service, Inc., and their successors (such Credit Instrument, a "Disqualified Instrument"), within 12 months of such failure (or pursuant to such other schedule as may be approved by the Finance Authority), the Participant shall cause cash (or a replacement Credit Instrument from a Credit Provider that is rated on a long term basis at least "AA-/Aa3" by Standard & Poor's Ratings Services, a Division of the McGraw-Hill Companies, and Moody's Investors Service, Inc., and their

successors)(or some combination thereof) in an aggregate amount equal to the stated credit available under the Disqualified Instrument(s) to be deposited in the related reserve account(s) in lieu of such Disqualified Instrument(s). No Disqualified Instrument shall be included as part of the reserve balance which satisfies any such reserve requirement under any such authorizing instrument. Nothing in this subsection shall waive or modify additional requirements contained in any such authorizing instrument (including the Authorizing Instrument related to the Bonds); the provisions of this subsection and any such authorizing instrument (including the Authorizing Instrument related to the Bonds) shall both be required to be met. Unless and until notice shall be given by the Finance Authority to the Participant, a surety policy issued by MBIA Insurance Corporation or Financial Guaranty Insurance Company that has been reinsured by National Public Finance Guarantee Corporation (formerly known as MBIA Insurance Corp. of Illinois) shall not be treated as a Disqualified Instrument.

(t) (i) comply with Title 40 CFR Part 34 (New Restrictions on Lobbying) and the Byrd Anti-Lobbying Amendment ("Lobbying Restrictions"); (ii) provide certifications and disclosures related to Lobbying Restrictions in a form and manner as may from time to time be required by SRF Policy Guidelines or the Safe Drinking Water Act including without limitation the Lobbying Restrictions; and (iii) pay any applicable civil penalty required by the Lobbying Restrictions as may be applicable to making a prohibited expenditure under Title 40 CFR Part 34, or failure to file any required certification or lobbying disclosures. The Participant understands and acknowledges that pursuant to such Lobbying Restrictions, the making of any such prohibited expenditure, or any such failure to file or disclose, is subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such expenditure or failure.

(u) Comply with all federal requirements applicable to the Loan (including those imposed by the 2014 Appropriations Act and related SRF Policy Guidelines) which the Participant understands includes, among other, requirements that all of the iron and steel products used in the Project are to be produced in the United States ("American Iron and Steel Requirement") unless (i) the Participant has requested and obtained a waiver from the Agency pertaining to the Project or (ii) the Finance Authority has otherwise advised the Participant in writing that the American Iron and Steel Requirement is not applicable to the Project.

(v) Comply with all record keeping and reporting requirements under the Safe Drinking Water Act, including any reports required by a Federal agency or the Finance Authority such as performance indicators of program deliverables, information on costs and project progress. The Participant understands that (i) each contract and subcontract related to the Project is subject to audit by appropriate federal and state entities and (ii) failure to comply with the Safe Drinking Water Act and this Agreement may be a default hereunder that results in a repayment of the Loan in advance of the maturity of the Bonds and/or other remedial actions.

(w) Whenever from time to time requested by the Finance Authority, submit evidence satisfactory to the Finance Authority demonstrating that the Participant's rates and charges are at a level adequate to produce and maintain sufficient net revenue after providing for the proper Operation and Maintenance of the Drinking Water System, on a proforma basis consistent with SRF Policy Guidelines, to provide 1.25x coverage on all obligations of the Drinking Water System (including the Bonds) and, in the event the Participant's rates and charges are insufficient to demonstrate such coverage, then to the extent permitted by law annually enact an increase in its rates and charges reasonably designed to be consistent with SRF Policy Guidelines regarding such coverage.

(x) Notwithstanding any provision of the Authorization Instrument to the contrary, not make any payment in lieu of property taxes from any account of the Drinking Water System (i) if the Finance Authority provides notice to the Participant that the Finance Authority has determined in its reasonable discretion that such a transfer adversely affects the Finance Authority and (ii) more frequently than semiannually if the Authority provides notice to the Participant so requiring such a limitation on frequency.

(y) Comply with all requirements of this Agreement applicable to the Loan (including those imposed by the attached Exhibit D).

Section 3.03. Representations and Warranties of the Participant. After due investigation and inquiry, the Participant hereby represents and warrants to the Finance Authority that:

(a) The Participant is duly organized and existing under State law, and constitutes a "political subdivision" within the meaning of I.C. 5-1.2-2-57 and a "participant" within the meaning of I.C. 5-1.2-2-54. The Project and the Drinking Water System are subject to I.C. 8-1.5.

(b) The Participant and its Drinking Water System are not subject to the jurisdiction of the Commission under I.C. 8-1-2 or any other applicable law and the Project and the Bonds are not subject to the Commission's review and approval requirements. If the Participant or its Drinking Water System is subject to the jurisdiction of the Commission under I.C. 8-1-2 or any other applicable law, the Commission has reviewed and approved the Project and the issuance of the Bonds and no additional approvals or consents are required to be obtained from the Commission related thereto.

(c) The Participant has full power and authority to adopt the Authorizing Instrument, enter into this Agreement and issue the Bonds and perform its obligations hereunder and thereunder.

(d) By all required action, the Participant has duly adopted the Authorizing Instrument and authorized the execution and delivery of this Agreement, the Bonds and all other papers delivered in connection herewith.

(e) Neither the execution of, nor the consummation of the transaction contemplated by, this Agreement nor the compliance with the terms and conditions of any other paper referred to herein, shall conflict with, result in a breach of or constitute a default under, any indenture, mortgage, lease, agreement or instrument to which the Participant is a party or by which the Participant or its property, including the Drinking Water System, is bound or any law, regulation, order, writ, injunction or decree of any court or governmental agency or instrumentality having jurisdiction.

(f) There is no litigation pending or, to the knowledge of the Participant, upon investigation, threatened that (1) challenges or questions the validity or binding effect of this Agreement, the Authorizing Instrument or the Bonds or the authority or ability of the Participant to execute and deliver this Agreement or the Bonds and perform its obligations hereunder or thereunder or (2) would, if adversely determined, have a significant adverse effect on the ability of the Participant to meet its obligations under this Agreement, the Authorizing Instrument or the Bonds.

(g) The Participant has not at any time failed to pay when due interest or principal on, and it is not now in default under, any warrant or other evidence of obligation or indebtedness of the Participant.

(h) All information furnished by the Participant to the Finance Authority or any of the persons representing the Finance Authority in connection with the Loan or the Project is accurate and complete in all material respects including compliance with the obligations, requirements and undertakings imposed upon the Participant pursuant to this Agreement.

(i) The Participant has taken or will take all proceedings required by law to enable it to issue and sell the Bonds as contemplated by this Agreement.

(j) For any outstanding bonds payable from the revenues of the Drinking Water System which are on a parity with the Bonds, each Credit Provider, if any, that has provided a Credit Instrument is at least rated on a long term basis "A-/A3" long term by Standard & Poor's Ratings Services, a Division of the McGraw-Hill Companies and Moody's Investors Service, Inc., and their successors, except as represented and set forth in Exhibit C attached thereto (and with respect to which true, accurate and complete copies of each such Credit Instrument have been delivered to the Finance Authority).

Each of the foregoing representations and warranties will be deemed to have been made by the Participant as of the date of this Agreement and as of the date of any disbursement of Loan proceeds (including from the Construction Fund). Each of the foregoing representations and warranties shall survive the Loan disbursements regardless of any investigation or investigations the Finance Authority may have undertaken.

Section 3.04. Covenants Regarding Assignment. The Participant acknowledges that the Finance Authority may pledge, sell or assign the Bonds or cause the Bonds to be pledged, sold or assigned, and certain of its rights related thereto, as permitted pursuant to Section 5.02 herein. The

Participant covenants and agrees to cooperate with and assist in, at its expense, any such assignment. Within 30 days following a request by the Finance Authority, the Participant covenants and agrees with the Finance Authority that the Participant will, at its expense, furnish any information, financial or otherwise, with respect to the Participant, this Agreement, the Authorizing Instrument and the Bonds and the Drinking Water System as the Finance Authority reasonably requests in writing to facilitate the sale or assignment of the Bonds.

Section 3.05. Nature of Information. All information furnished by the Participant to the Finance Authority or any person representing the Finance Authority in connection with the Loan or the Project may be furnished to any other person the Finance Authority, in its judgment, deems necessary or desirable in its operation and administration of the Drinking Water SRF Program.

Section 3.06. Tax Covenants. The Participant hereby covenants that it will not take, or cause or permit to be taken by it or by any party under its control, or fail to take or cause to permit to be taken by it or by any party under its control, any action that would result in the loss of the exclusion from gross income for federal income tax purposes of interest on the Bonds pursuant to Section 103 of the Code. The Participant further covenants that it will not do any act or thing that would cause the Bonds to be "private activity bonds" within the meaning of Section 141 of the Code or "arbitrage bonds" within the meaning of Section 148 of the Code. In furtherance and not in limitation of the foregoing, the Participant shall take all action necessary and appropriate to comply with the arbitrage rebate requirements under Section 148 of the Code to the extent applicable to the Participant or the Bonds, including accounting for and making provision for the payment of any and all amounts that may be required to be paid to the United States of America from time to time pursuant to Section 148 of the Code.

Section 3.07. Non-Discrimination Covenant. Pursuant to and with the force and effect set forth in I.C. 22-9-1-10, the Participant hereby covenants that the Participant, and its contractor and subcontractor for the Project, shall not discriminate against any employee or applicant for employment, to be employed in the performance of this Agreement, with respect to the hire, tenure, terms, conditions or privileges of employment, or any matter directly or indirectly related to employment, because of race, color, religion, sex, disability, national origin or ancestry.

(End of Article III)

ARTICLE IV - DEFAULTS

Section 4.01. Remedies. The Finance Authority's obligation to make a disbursement under the Loan to the Participant hereunder may be terminated at the option of the Finance Authority, without giving any prior notice to the Participant, in the event: (a) the Participant fails to undertake or perform in a timely manner any of its agreements, covenants, terms or conditions set forth herein or in any paper entered into or delivered in connection herewith (including the Authorizing Instrument); or (b) any representation or warranty made by the Participant as set forth herein or in any paper entered into or delivered in connection herewith is materially false or misleading. Any such event shall constitute an event of default and in addition to any other remedies at law or in equity, the Finance Authority may (x) require a Loan Reduction Payment pursuant to Section 2.06 herein as if it were a date that was three (3) years after the dated date of the Bonds, (y) in the event a Deposit Agreement has not previously been entered into related to the Participant's Bond Fund (including any related reserve), require the Participant to enter into a Deposit Agreement (or to modify any such previously entered Deposit Agreement) and the Participant shall enter into (or modify) such an agreement within 5 days after any such demand and (z) without giving any prior notice, declare the entire outstanding principal amount of the Loan, together with accrued interest thereon, immediately due and payable.

Section 4.02. Effect of Default. Failure on the part of the Finance Authority in any instance or under any circumstance to observe or perform fully any obligation assumed by or imposed upon the Finance Authority by this Agreement or by law shall not make the Finance Authority liable in damages to the Participant or relieve the Participant from paying any Bond or fully performing any other obligation required of it under this Agreement or the Authorizing Instrument; provided, however, that the Participant may have and pursue any and all other remedies provided by law for compelling performance by the Finance Authority of such obligation assumed by or imposed upon the Finance Authority. The obligations of the Finance Authority hereunder do not create a debt or a liability of the Finance Authority or the State under the constitution of the State or a pledge of the faith or credit of the Finance Authority or the State and do not directly, indirectly or contingently, obligate the Finance Authority or the State to levy any form of taxation for the payment thereof or to make any appropriation for their payment. Neither the Finance Authority or the State, nor any agent, attorney, member or employee of the Finance Authority or the State shall in any event be liable for damages, if any, for the nonperformance of any obligation or agreement of any kind whatsoever set forth in this Agreement.

Section 4.03. Defaults under Prior Agreements. The Participant and the Finance Authority agree that any event of default occurring under the Prior Agreements shall constitute an event of default under this Agreement. Similarly, the Participant and the Finance Authority agree that any event of default under this Agreement, or under any subsequent financial assistance agreement entered into between the Participant and the Finance Authority, shall constitute an event of default under the Prior Agreements and the subsequent financial assistance agreement, if any, as the case may be.

(End of Article IV)

ARTICLE V

MISCELLANEOUS

Section 5.01. Citations. Any reference to a part, provision, section or other reference description of a federal or State statute, rule or regulation contained herein shall include any amendments, replacements or supplements to such statutes, rules or regulation as may be made effective from time to time. Any reference to a Loan disbursement shall include any disbursement from the Construction Fund. Any use of the term "including" herein shall not be a limitation as to any provision herein contained but shall mean and include, without limitation, the specific matters so referenced.

Section 5.02. Assignment. Neither this Agreement, nor the Loan or the proceeds thereof may be assigned by the Participant without the prior written consent of the Finance Authority and any attempt at such an assignment without such consent shall be void. The Finance Authority may at its option sell or assign all or a portion of its rights and obligations under this Agreement, the Authorizing Instrument, and the Bonds to an agency of the State or to a separate body corporate and politic of the State or to a trustee under trust instrument to which the Finance Authority, the State or any assignee is a beneficiary or party. The Finance Authority may at its option pledge or assign all or a portion of its rights under this Agreement, the Authorizing Instrument, and the Bonds to any person. The Participant hereby consents to any such pledge or assignment by the Finance Authority. This Agreement shall be binding upon and inure to the benefit of any permitted secured party, successor and assign.

Section 5.03. No Waiver. Neither the failure of the Finance Authority nor the delay of the Finance Authority to exercise any right, power or privilege under this Agreement shall operate as a waiver thereof, nor shall any single or partial exercise of any right, power or privilege preclude any other further exercise of any other right, power or privilege.

Section 5.04. Modifications. No change or modification of this Agreement shall be valid unless the same is in writing and signed by the parties hereto.

Section 5.05. Entire Agreement. This Agreement contains the entire agreement between the parties hereto and there are no promises, agreements, conditions, undertakings, warranties and representations, either written or oral, expressed or implied between the parties hereto other than as herein set forth or as may be made in the Authorizing Instrument and the other papers delivered in connection herewith. In the event there is a conflict between the terms of this Agreement and the Authorizing Instrument, the terms of this Agreement shall control. It is expressly understood and agreed that except as otherwise provided herein this Agreement represents an integration of any and all prior and contemporaneous promises, agreements, conditions, undertakings, warranties and representations between the parties hereto. This Agreement shall not be deemed to be a merger or integration of the existing terms under any Prior Agreements except as expressly set forth in Section 4.03 herein.

Section 5.06. Execution of Counterparts. This Agreement may be executed in any number of counterparts, each of which shall be executed by the Finance Authority and the Participant, and all of which shall be regarded for all purposes as one original and shall constitute one and the same instrument.

Section 5.07. Severability of Invalid Provisions. If any one or more of the covenants or agreements provided in this Agreement on the part of the Finance Authority or the Participant to be performed shall be deemed by a court of competent jurisdiction to be contrary to law or cause the Bonds to be invalid as determined by a court of competent jurisdiction, then such covenant or covenants or agreement or agreements shall be deemed severable from the remaining covenants and agreements and waived and shall in no way affect the validity of the other provisions of this Agreement.

Section 5.08. Notices. All notices hereunder shall be sufficiently given for all purposes hereunder if in writing and delivered personally or sent or transmitted to the appropriate destination as set forth below in the manner provided for herein. Notice to the Finance Authority shall be addressed to:

Indiana Finance Authority
SRF Programs
100 North Senate, Room 1275

Indianapolis, Indiana 46204
Attention: Director of Environmental Programs

or at such other address(es) or number(s) and to the attention of such other person(s) as the Finance Authority may designate by notice to the Participant. Notices to the Participant shall be addressed to:

City of Mishawaka, Indiana
City Hall
Post Office Box 363
600 East Third Street
Mishawaka, Indiana 46546-0363
Attention: City Controller

or at such other address(es) or number(s) and to the attention of such other person(s) as the Participant may designate by notice to the Finance Authority. Any notice hereunder shall be deemed to have been served or given as of (a) the date such notice is personally delivered, (b) three (3) Business Days after it is mailed U.S. mail, First Class postage prepaid, (c) one (1) Business Day after it is sent on such terms by Federal Express or similar next-day courier, or (d) the same day as it is sent by facsimile transmission with telephonic confirmation of receipt by the person to whom it is sent.

Section 5.09. Expenses. The Participant covenants and agrees to pay (a) the fees, costs and expenses in connection with making the Loan, including issuing the Bonds and providing the necessary certificates, documents and opinions required to be delivered therewith; (b) the fees, costs and expenses in connection with making and administering the Loan; (c) the costs and expenses of complying with its covenants made herein; and (d) any and all costs and expenses, including attorneys' fees, incurred by the Finance Authority in connection with the enforcement of this Agreement, the Authorizing Instrument and the Bonds in the event of the breach by the Participant of or a default under this Agreement, the Authorizing Instrument or the Bonds. Notwithstanding clause (b) above, the Participant shall not be obligated to pay any of the fees, costs and expenses in connection with administering the Loan except as follows: (1) the Finance Authority may request and the Participant shall promptly pay (no later than the date first above written), a closing fee in connection with the Loan in an amount determined by the Finance Authority, but not exceeding \$1,000, which may not be paid from a Loan disbursement; (2) the Finance Authority may request and the Participant shall promptly pay (no later than thirty (30) days after any request), an annual administrative fee in connection with the Loan in an amount determined by the Finance Authority, but not exceeding \$1,000, which may not be paid from a Loan disbursement; (3) the Finance Authority may request and the Participant shall promptly pay (no later than thirty (30) days after any request), a Non-Use Fee in connection with the Loan, which may not be paid from a Loan disbursement; (4) for so long as the Finance Authority is the registered owner of the Bonds, at the direction of the Finance Authority, the interest rate on the Bonds may be adjusted to lower the interest rate on the Bonds, and the difference between the amount payable as the original rate on the Bonds and the lower rate shall be deemed an additional administrative fee in connection with the Drinking Water SRF Program; and (5) the Participant shall only be obligated to pay fees, costs and expenses of the Finance Authority's counsel and financial advisers in connection with making the Loan up to \$10,000, which may be paid from a Loan disbursement.

Section 5.10. Applicable Law. This Agreement shall be construed in accordance with and governed by the laws of the State of Indiana.

Section 5.11. Term. This Agreement shall terminate at such time as the Participant has fully met and discharged all of its obligations hereunder, which term may extend beyond the final payment of the Bonds or provision for the payment of the Bonds pursuant to the Authorizing Instrument.

Section 5.12. Non-Collusion. The undersigned attests, subject to the penalties of perjury, that he/she is an authorized officer or representative of the Participant, that he/she has not, nor has any other officer or representative of the Participant, directly or indirectly, to the best of the undersigned's knowledge, entered into or offered to enter into any combination, collusion or agreement to receive pay, and that the undersigned has not received or paid any sum of money or other consideration for the execution of this Agreement other than that which appears upon the face of the agreement or is a payment to lawyers, accountants and engineers by the Participant related to customary services rendered in connection with the Loan.

Section 5.13. Federal Award Information. The Catalogue of Federal Domestic Assistance (“CFDA”) Number for the Authority’s Drinking Water SRF Program is 66.468 and the Federal Agency & Program Name is “US Environmental Protection Agency Capitalization Grant for Drinking Water State Revolving Funds.”

(End of Article V)

[THE REMAINDER OF THIS PAGE HAS
BEEN INTENTIONALLY LEFT BLANK]

IN WITNESS WHEREOF, the parties have caused this Agreement to be executed by their duly authorized officers or officials, all as of the date first above written.

CITY OF MISHAWAKA, INDIANA

(1) INDIANA FINANCE AUTHORITY

"Participant"

"Finance Authority"

By: _____

By: _____

James P. McGoff

Director of Environmental Programs

Attested by Finance Authority Staff:

Attest: _____

By: _____

EXHIBIT A

The Project consists of the following improvements to the Participant's Drinking Water System:

- [To come from PER]

[The Project contains components that are GPR Projects, which GPR Projects Expenditures have been determined and are expected as of the date of this Agreement to be in the amount as set forth in the Participant's business case or categorical exclusion which is posted at www.srf.in.gov.]

The Project is more fully described in, and shall be in accordance with, the Preliminary Engineering Report and the Plans and Specifications approved by the Finance Authority (or if designated by the Finance Authority, the Department).

[End of Exhibit A]

EXHIBIT B
Principal Payment Schedule for the Bonds

<u>Maturity Date</u>	<u>Principal Amount</u>	<u>Maturity Date</u>	<u>Principal Amount</u>
<u>01/01/21</u>	<u>\$</u>	<u>01/01/39</u>	<u>\$</u>
<u>07/01/21</u>		<u>07/01/39</u>	
<u>07/01/22</u>		<u>01/01/40</u>	
<u>01/01/22</u>		<u>07/01/40</u>	
<u>07/01/23</u>		<u>01/01/41</u>	
<u>01/01/23</u>		<u>07/01/41</u>	
<u>07/01/24</u>		<u>01/01/42</u>	
<u>01/01/24</u>		<u>07/01/42</u>	
<u>07/01/25</u>		<u>01/01/43</u>	
<u>01/01/25</u>		<u>07/01/43</u>	
<u>07/01/26</u>		<u>01/01/44</u>	
<u>01/01/26</u>		<u>07/01/44</u>	
<u>07/01/27</u>		<u>01/01/45</u>	
<u>01/01/27</u>		<u>07/01/45</u>	
<u>07/01/28</u>		<u>01/01/46</u>	
<u>01/01/28</u>		<u>07/01/46</u>	
<u>07/01/29</u>		<u>01/01/47</u>	
<u>01/01/29</u>		<u>07/01/47</u>	
<u>07/01/30</u>		<u>01/01/48</u>	
<u>01/01/30</u>		<u>07/01/48</u>	
<u>07/01/31</u>		<u>01/01/49</u>	
<u>01/01/31</u>		<u>07/01/49</u>	
<u>07/01/32</u>		<u>01/01/50</u>	
<u>01/01/32</u>		<u>07/01/50</u>	
<u>07/01/33</u>		<u>01/01/51</u>	
<u>01/01/33</u>		<u>07/01/51</u>	
<u>07/01/34</u>		<u>01/01/52</u>	
<u>01/01/34</u>		<u>07/01/52</u>	
<u>07/01/35</u>		<u>01/01/53</u>	
<u>01/01/35</u>		<u>07/01/53</u>	
<u>07/01/36</u>		<u>01/01/54</u>	
<u>01/01/36</u>		<u>07/01/54</u>	
<u>07/01/37</u>		<u>01/01/55</u>	
<u>01/01/37</u>		<u>07/01/55</u>	
<u>07/01/38</u>		<u>01/01/56</u>	
<u>01/01/38</u>		<u>07/01/56</u>	
<u>07/01/38</u>			

		<u>TOTAL</u>	<u>\$</u>
--	--	---------------------	------------------

[End of Exhibit B]

EXHIBIT C
Credit Instrument

Credit Providers rated on a long term basis lower than "A-/A3" long term by Standard & Poor's Ratings Services, a Division of the McGraw-Hill Companies and Moody's Investors Service, Inc. are:

- None.

[End of Exhibit C]

Exhibit D
Additional Terms

A. The following additional terms in this Paragraph A are [NOT] applicable to the Loan:

“Equivalency Project” shall mean a project designated by the Finance Authority as an “equivalency project” under the Safe Drinking Water Act related to the “US Environmental Protection Agency Capitalization Grant for Drinking Water State Revolving Funds” for the federal fiscal year ending September 30, 2019 (or such later federal fiscal year as the Finance Authority may otherwise designate).

The Participant understands and acknowledges that the Project has been designated as an Equivalency Project and is required to meet the related applicable requirements of the Safe Drinking Water Act.

B. The following additional terms in this Paragraph B related to GPR Projects (and the related defined terms) are [NOT] applicable to the Loan.

“GPR Projects” shall mean Project components that meet the requirement of the “Green Project Reserve (GPR) Sustainability Incentive Program” consistent with SRF Policy Guidelines including applicable requirements of the Drinking Water SRF Act.

“GPR Projects Adjustment Fee” shall mean an amount which would equal the gross additional interest that would have accrued on the Bonds from the date of this Agreement through their scheduled final maturity, had such Bonds been issued at an interest rate determined under the Drinking Water SRF Program’s interest rate policies and practices using the final, actual GPR Projects Expenditures (rather than the amount referenced in the Participant’s business case or categorical exclusion posted at www.srf.in.gov), all as determined by the Finance Authority.

“GPR Projects Expenditures” shall mean those costs and expenses incurred by the Participant that are part of the Project which are GPR Projects in nature (within the meaning of the Drinking Water SRF Act) as determined by the Finance Authority, in order for the Bonds to receive special interest rate treatment under the Drinking Water SRF Program’s interest rate policies and practices.

The Participant understands and acknowledges that a special interest rate has been applied to the Bonds as a result of a portion of the Project having been identified by the Participant as being a GPR Projects project. In the event GPR Projects Expenditures are hereafter determined by the Finance Authority to be less than the amount referenced in the Participant’s business case or categorical exclusion, then the Finance Authority may request and the Participant shall promptly pay (no later than thirty (30) days after any request), a GPR Projects Adjustment Fee in connection with the Loan. The Participant shall certify to the Finance Authority those Loan disbursements it represents to be its GPR Projects Expenditures when and as required by SRF Policy Guidelines. The Participant understands and acknowledges

that it is required to submit a business case or categorical exclusion documenting GPR Projects prior to loan closing or if a request is made pursuant to Section 3.02(f) of this Agreement.

C. The following additional terms in this Paragraph C related to LLR Projects (and the related defined terms) are [NOT] applicable to the Loan.

“LLR Projects” shall mean Project components that meet the requirement of the “Lead Line Replacement (LLR) Incentive Program” consistent with SRF Policy Guidelines including applicable requirements of the Drinking Water SRF Act.

“LLR Projects Adjustment Fee” shall mean an amount which would equal the gross additional interest that would have accrued on the Bonds from the date of this Agreement through their scheduled final maturity, had such Bonds been issued at an interest rate determined under the Drinking Water SRF Program’s interest rate policies and practices using the final, actual LLR Projects Expenditures (rather than the amount referenced in the Participant’s related post-bid and other documents submitted to the Finance Authority), all as determined by the Finance Authority.

“LLR Projects Expenditures” shall mean those costs and expenses incurred by the Participant that are part of the Project which are LLR Projects in nature (within the meaning of the Drinking Water SRF Act) as determined by the Finance Authority, in order for the Bonds to receive special interest rate treatment under the Drinking Water SRF Program’s interest rate policies and practices.

The Participant understands and acknowledges that a special interest rate has been applied to the Bonds as a result of a portion of the Project having been identified by the Participant as being a LLR Projects project. In the event LLR Projects Expenditures are hereafter determined by the Finance Authority to be less than the amount referenced in the Participant’s related post-bid and other documents submitted to the Finance Authority, then the Finance Authority may request and the Participant shall promptly pay (no later than thirty (30) days after any request), a LLR Projects Adjustment Fee in connection with the Loan. The Participant shall certify to the Finance Authority those Loan disbursements it represents to be its LLR Projects Expenditures when and as required by SRF Policy Guidelines.

[End of Exhibit D]

Summary report: Litera® Change-Pro for Word 10.9.2.0 Document comparison done on 12/3/2020 4:20:40 PM	
Style name: IM Default	
Intelligent Table Comparison: Active	
Original DMS: dm://INDY/15324312/4	
Modified DMS: dm://INDY/15324312/5	
Changes:	
<u>Add</u>	268
Delete	7
Move From	0
Move To	0
<u>Table Insert</u>	2
Table Delete	0
<u>Table moves to</u>	0
<u>Table moves from</u>	0
Embedded Graphics (Visio, ChemDraw, Images etc.)	0
Embedded Excel	0
Format changes	0
Total Changes:	277

1st Reading 11-04-20
2nd Reading 11-16-20
Passed
Failed
Continued To

RECEIVED
DEBORAH S. BLOCK, MMC

OCT 29 2020

PROPOSED ORDINANCE NO. 2020-40

ORDINANCE NO. _____

CITY CLERK
MISHAWAKA, IN

**AN ORDINANCE ADOPTING REVISED RATES AND CHARGES FOR
WATER SERVICES FURNISHED BY THE CITY OF MISHAWAKA'S
MUNICIPAL WATER UTILITY**

WHEREAS, the City of Mishawaka, Indiana, operates a municipal water utility through its agency Mishawaka Utilities (the "Utility") for the purpose of acquiring and distributing water to aid City and surrounding areas; and,

WHEREAS, the existing rates and charges for water services provided by the Utility were placed into effect following approval by the Common Council in Ordinance 5569 on March 6, 2017; and,

WHEREAS, the Utility engaged Baker Tilly Municipal Advisors, LLC to study the Utility's revenue requirements for water service under IC 8-1.5-3.8 and IC 8-1.5-2-28, and develop, in addition to other information, annual pro forma revenues and expenses for the period ending December 31, 2023; and,

WHEREAS, Baker Tilly Municipal Advisors, LLC has studied the Utility's annual revenue requirements and determined that the Utility's annual pro forma operating revenues from water service do not produce an adequate net operating income, and such revenues need to be increased to provide income for the revenue requirements set forth in IC 8-1.5-3-8 and IC 8-1.5-2-28; and,

WHEREAS, the Utility Board of the City of Mishawaka has recommended to the Common Council that it approve by Ordinance the revised rates and charges for water service developed by Baker Tilly Municipal Advisors, LLC, which rates and charges are set forth as part of Exhibits "A" and "B" attached hereto; and,

WHEREAS, the Common Council of the City of Mishawaka, Indiana now finds that (i) the Utility's annual revenues from rates and charges for water service should be increased with the Utility's annual revenues from water service increasing by \$1,910,600 in Phase One and \$1,939,200 in Phase Two; and (ii) the rates and charges for water service attached hereto as part of Exhibits "A" and "B" have been set to recover the necessary increases in the Utility's annual revenues from water service and so that they are non-discriminatory, "reasonable and just charges" for services within the meaning of IC 8-1.5-3-8;

NOW, THEREFORE, BE IT ORDAINED BY THE COMMON COUNCIL OF THE CITY OF MISHAWAKA, INDIANA, THAT:

Section 1. The rates and charges for water service attached hereto as part of Exhibits "A" and "B" are hereby adopted as and for the rates and charges to be utilized by the Utility when charging customers for water service, effective as set forth below.

Section 2. All Ordinances and parts of Ordinances in conflict herewith are hereby repealed; provided, however, that the existing rates and charges for water service shall remain in full force and

effect until the rates and charges fixed by this Ordinance shall be approved by the Commission, and until such time as the Order of said Commission approving said new rates and charges shall direct.

Section 3. This Ordinance shall be in full force and effect from and after its passage. Phase One rates shall be effective on January 1, 2022 and phase two rates shall be effective on January 1, 2023.

PASSED AND ADOPTED BY THE COMMON COUNCIL OF THE CITY OF MISHAWAKA, INDIANA, ON THIS _____ DAY OF _____, 2020.

Common Council
City of Mishawaka, Indiana

Gregg Hixenbaugh, President

ATTEST:

Deborah S. Block, IAMC, MMC, City Clerk

Presented by me, the undersigned City Clerk of the City of Mishawaka, Indiana, to the Mayor of the City of Mishawaka, Indiana, for approval on the ____ day of _____, 2020 at _____ o'clock ____m.

Deborah S. Block, IAMC, MMC City Clerk

Having examined the foregoing Ordinance, I do as the Mayor of the City of Mishawaka, Indiana, approve said Ordinance and return the same to the City Clerk of the City of Mishawaka, Indiana, this _____ day of _____, 2020 at _____m.

David A. Wood, Mayor

APPENDIX A

EXHIBIT A

SCHEDULE OF RATES AND CHARGES

MISHAWAKA UTILITY - INSIDE CITY

MISHAWAKA (INDIANA) MUNICIPAL WATER UTILITY

SCHEDULE OF RATES AND CHARGES - INSIDE CITY

(Cont'd)

For the use of and the service rendered by the Water Utility of the City of Mishawaka, Indiana, the following rates and charges based upon the amount of water supplied by said Water Utility.

Residential and Multi-Unit:

- (a) Metered rates - Phase One and Phase Two effective January 1, 2022 and January 1, 2023, respectively, in the amounts as follows:

<u>Metered Rates per Month</u>	<u>Current (2021)</u>	<u>Phase One</u>	<u>Phase Two</u>
Rate per 100 Cubic Feet	\$2.52	\$2.92	\$3.33

- (b) Customer base charge - Phase One and Phase Two effective January 1, 2022 and January 1, 2023, respectively, in the amounts as follows:

<u>Size of Meter *</u>	<u>Current (2021)</u>	<u>Phase One</u>	<u>Phase Two</u>
5/8" to 3/4"	\$8.26	\$9.58	\$10.92
1"	8.26	9.58	10.92

*Meters over 1 inch are reclassified to commercial and industrial rates

- (c) Fire Protection charge - Phase One and Phase Two effective January 1, 2022 and January 1, 2023, respectively, in the amounts as follows:

<u>Customer Charge</u>	<u>Current (2021)</u>	<u>Phase One</u>	<u>Phase Two</u>
Per month	\$6.09	\$7.06	\$8.05

MISHAWAKA (INDIANA) MUNICIPAL WATER UTILITY

SCHEDULE OF RATES AND CHARGES - INSIDE CITY

(Cont'd)

Small Non-Residential

(a) <u>Metered Rates Per Month</u>	<u>Current</u> <u>(2021)</u>	<u>Phase</u> <u>One</u>	<u>Phase</u> <u>Two</u>
All consumption per 100 cubic feet	\$2.57	\$2.98	\$3.40

(b) Customer Base Charge

Each user shall pay a monthly base charge in accordance with the following applicable size meter installed:

<u>Size of Meter</u>	<u>Current</u> <u>(2021)</u>	<u>Phase</u> <u>One</u>	<u>Phase</u> <u>Two</u>
5/8" - 3/4"	\$8.26	\$9.58	\$10.92
1"	16.67	19.34	22.05
1 1/2"	30.66	35.57	40.55
2"	47.41	55.00	62.70
3"	86.54	100.39	114.44

(c) Fire Protection Charge

<u>Size of Meter</u>	<u>Current</u> <u>(2021)</u>	<u>Phase</u> <u>One</u>	<u>Phase</u> <u>Two</u>
5/8" - 3/4"	\$6.09	\$7.06	\$8.05
1"	15.22	17.66	20.13
1 1/2"	30.43	35.30	40.24
2"	48.70	56.49	64.40
3"	91.31	105.92	120.75

MISHAWAKA (INDIANA) MUNICIPAL WATER UTILITY

SCHEDULE OF RATES AND CHARGES - INSIDE CITY

(Cont'd)

Large Non-Residential

(a)	<u>Metered Rates Per Month</u>	<u>Current (2021)</u>	<u>Phase One</u>	<u>Phase Two</u>
	First 7,750 cubic feet	\$2.67	\$3.10	\$3.53
	Over 7,750 cubic feet	1.69	1.96	2.23
(b)	<u>Customer Base Charge</u>			

Each user shall pay a monthly base charge in accordance with the following applicable size meter installed:

<u>Size of Meter</u>	<u>Current (2021)</u>	<u>Phase One</u>	<u>Phase Two</u>
4"	\$142.43	\$165.22	\$188.35
6"	282.26	327.42	373.26
8"	449.99	521.99	595.07
10"	645.70	749.01	853.87

(c) Fire Protection Charge

<u>Size of Meter</u>	<u>Current (2021)</u>	<u>Phase One</u>	<u>Phase Two</u>
4"	\$152.15	\$176.49	\$201.20
6"	304.36	353.06	402.49
8"	486.98	564.90	643.99
10"	700.02	812.02	925.70

Hydrant Rental

	<u>Current (2021)</u>	<u>Phase One</u>	<u>Phase Two</u>
Private hydrants - per annum	\$784.21	\$909.68	\$1,037.04

Private Fire Protection Service

<u>Sprinkler connection - per annum</u>	<u>Current (2021)</u>	<u>Phase One</u>	<u>Phase Two</u>
1"	\$21.79	\$25.28	\$28.82
1 1/2"	49.11	56.97	64.95
2"	87.16	101.11	115.27
3"	196.09	227.46	259.30
4"	348.63	404.41	461.03
6"	784.21	909.68	1,037.04
8"	1,394.13	1,617.19	1,843.60
10"	2,178.34	2,526.87	2,880.63
12"	3,136.86	3,638.76	4,148.19

MISHAWAKA (INDIANA) MUNICIPAL WATER UTILITY

SCHEDULE OF RATES AND CHARGES - INSIDE CITY

(Cont'd)

Non-Recurring Charges

Refer to Appendix "B".

Current rate effective March 5, 2013.

EXHIBIT B

SCHEDULE OF RATES AND CHARGES

MISHAWAKA UTILITY - OUTSIDE RATES

MISHAWAKA (INDIANA) MUNICIPAL WATER UTILITY

SCHEDULE OF RATES AND CHARGES - OUTSIDE CITY

(Cont'd)

For the use of and the service rendered by the Water Utility of the City of Mishawaka, Indiana, the following rates and charges based upon the amount of water supplied by said Water Utility.

Residential & Multi-Unit:

- (a) Metered rates - Phase One and Phase Two effective January 1, 2022 and January 1, 2023, respectively, in the amounts as follows:

<u>Metered Rates per Month</u>	<u>Current (2021)</u>	<u>Phase One</u>	<u>Phase Two</u>	<u>Surcharge Percentage</u>
Rate per 100 Cubic Feet	\$2.92	\$3.39	\$3.86	16%

- (b) Customer base charge - Phase One and Phase Two effective January 1, 2022 and January 1, 2023, respectively, in the amounts as follows:

<u>Size of Meter *</u>	<u>Current (2021)</u>	<u>Phase One</u>	<u>Phase Two</u>	<u>Surcharge Percentage</u>
5/8" to 3/4"	\$9.75	\$11.31	\$12.89	18%
1"	9.75	11.31	12.89	18%

*Meters over 1 inch are reclassified to commercial and industrial rates

- (c) Fire Protection charge - Phase One and Phase Two effective January 1, 2022 and January 1, 2023, respectively, in the amounts as follows:

<u>Customer Charge</u>	<u>Current (2021)</u>	<u>Phase One</u>	<u>Phase Two</u>
Per month	\$6.09	\$7.06	\$8.05

MISHAWAKA (INDIANA) MUNICIPAL WATER UTILITY

SCHEDULE OF RATES AND CHARGES - OUTSIDE CITY

(Cont'd)

Small Non-Residential

	<u>Current</u>	<u>Phase</u>	<u>Phase</u>	<u>Surcharge</u>
(a) <u>Metered Rates Per Month</u>	<u>(2021)</u>	<u>One</u>	<u>Two</u>	<u>Percentage</u>
All Consumption	\$2.93	\$3.40	\$3.88	14%

(b) Customer Base Charge

Each user shall pay a monthly base charge in accordance with the following applicable size meter installed:

<u>Size of Meter</u>	<u>Current</u>	<u>Phase</u>	<u>Phase</u>	<u>Surcharge</u>
	<u>(2021)</u>	<u>One</u>	<u>Two</u>	<u>Percentage</u>
5/8" - 3/4"	\$9.75	\$11.31	\$12.89	18%
1"	20.39	23.65	26.96	22%
1-1/2"	38.10	44.20	50.39	24%
2"	59.39	68.89	78.53	25%
3"	109.02	126.46	144.16	26%

(c) Fire Protection Charge

	<u>Current</u>	<u>Phase</u>	<u>Phase</u>
<u>Size of Meter</u>	<u>(2021)</u>	<u>One</u>	<u>Two</u>
5/8" - 3/4"	\$6.09	\$7.06	\$8.05
1"	15.22	17.66	20.13
1 1/2"	30.43	35.30	40.24
2"	48.70	56.49	64.40
3"	91.31	105.92	120.75

MISHAWAKA (INDIANA) MUNICIPAL WATER UTILITY

SCHEDULE OF RATES AND CHARGES - OUTSIDE CITY

(Cont'd)

Large Non-Residential

	<u>Current</u>	<u>Phase</u>	<u>Phase</u>	<u>Surcharge</u>
(a) <u>Metered Rates Per Month</u>	<u>(2021)</u>	<u>One</u>	<u>Two</u>	<u>Percentage</u>
First 7,750 cubic feet	\$2.50	\$2.90	\$3.31	(6%)
Over 7,750 cubic feet	1.94	2.25	2.57	15%

(b) Customer Base Charge

Each user shall pay a monthly base charge in accordance with the following applicable size meter installed:

<u>Size of Meter</u>	<u>Current</u>	<u>Phase</u>	<u>Phase</u>	<u>Surcharge</u>
	<u>(2021)</u>	<u>One</u>	<u>Two</u>	<u>Percentage</u>
4"	\$179.94	\$208.73	\$237.95	26%
6"	357.19	414.34	472.35	27%
8"	569.87	661.05	753.60	27%
10"	818.04	948.93	1,081.78	27%

(c) Fire Protection Charge

<u>Size of Meter</u>	<u>Current</u>	<u>Phase</u>	<u>Phase</u>
	<u>(2021)</u>	<u>One</u>	<u>Two</u>
4"	\$152.15	\$176.49	\$201.20
6"	304.36	353.06	402.49
8"	486.98	564.90	643.99
10"	700.02	812.02	925.70

Hydrant Rental

	<u>Current</u>	<u>Phase</u>	<u>Phase</u>
	<u>(2021)</u>	<u>One</u>	<u>Two</u>
Private hydrants - per annum	\$784.21	\$909.68	\$1,037.04

Private Fire Protection Service

	<u>Current</u>	<u>Phase</u>	<u>Phase</u>
	<u>(2021)</u>	<u>One</u>	<u>Two</u>
Sprinkler connection - per annum			
1"	\$21.79	\$25.28	\$28.82
1 1/2"	49.11	56.97	64.95
2"	87.16	101.11	115.27
3"	196.09	227.46	259.30
4"	348.63	404.41	461.03
6"	784.21	909.68	1,037.04
8"	1,394.13	1,617.19	1,843.60
10"	2,178.34	2,526.87	2,880.63
12"	3,136.86	3,638.76	4,148.19

MISHAWAKA (INDIANA) MUNICIPAL WATER UTILITY

SCHEDULE OF RATES AND CHARGES - OUTSIDE CITY

(Cont'd)

Non-Recurring Charges

Refer to Appendix "B".

Current rate effective March 5, 2013.

APPENDIX B

NON-RECURRING CHARGES

MISHAWAKA (INDIANA) MUNICIPAL WATER UTILITY

NON-RECURRING CHARGES

- A. Water Account Service Charge - \$20.00
- B. Sprinkling Meters Turn-on Charge \$20.00
- C. Service Deposits- Service deposits are set by the Utility and can be up to one-sixth of normal annual bill per service location
- D. Failure to Meet Appointment Scheduled Charge - \$15.00
- E. Dishonored Negotiable Instrument Charge - \$20.00
- F. Processing/Disconnect Charge
 - Disconnect During Office Hours—\$25.00
 - Additional Reconnect charges after hours—\$70.00
 - Additional Reconnect charges on Sundays & Holidays— \$90.00
- G. After Hours Service Charge
 - After hours & Saturdays - \$70.00 minimum 1st 2 hours
 - After 2 hours call out time an additional \$35.00 per hour per man
 - Sundays and Holidays - \$90.00 minimum 1st 2 hours
 - After 2 hours call out time an additional \$45.00 per hour per man
- H. Turn Water Services Off/On (For Repair or To Test Plumbing). No charge during office hours 8-5

For after hour charges, refer to item G
- I. Late Penalty – 10% of the first \$3.00 plus 3% of the balance
- J. Meter Tampering Charge
 - First Offense – Actual cost of parts, labor, equipment and overhead plus cost of service estimated to have been used, based on prior history - \$75.00 + damages and a police report filed with police.
 - Second Offense Same as above, plus \$250.00 + damages.
 - Subsequent Offenses – Same as second offense, plus disconnection of service

MISHAWAKA (INDIANA) MUNICIPAL WATER UTILITY

NON-RECURRING CHARGES

K. Violation of Fire Service Agreement – Illegal use of fire hydrant

First Offense - \$500.00

Subsequent Offense - \$1,000.00 and subject to criminal charges

L. Construction Permit Fees

150 day Residential – \$65.00

240 day Commercial – \$135.00 Per Building or \$5.00 per unit (whichever is larger)

320 day Industrial – \$600.00 Per Building

M. New Service Address Meter Charges –

Contact Water Department for current cost – 574-258-1652

Meter Size	Charge
5/8" – 3/4" (touch pad)	Actual Current Cost
1"	Actual Current Cost
1 1/2"	Actual Current Cost
2"	Actual Current Cost
3" & Larger	Actual Current Cost

Damage to Existing System Actual cost of repair

N. Meter Test at Customer Request

(No charge for first & second meter testing if second test has been requested after twelve months of the first testing)

Meter Size	Test Fee
5/8" — 1"	\$25.00
1 1/2" - 2"	\$48.00
3" & larger	Actual Cost

MISHAWAKA (INDIANA) MUNICIPAL WATER UTILITY

NON-RECURRING CHARGES

O. Hydrant Use Agreement

Hydrant Permit Charge - \$35.00

Deposit \$750.00

Damages to hydrant - repair cost to be deducted from deposit before refund, plus cost of water used, or per month (whichever is larger) \$50.00 minimum.

Township Hydrant Use (Fire Department Use Only) \$25.00 plus cost of water.

P. Tapping Permit

Existing taps never used and no fee paid at time of installation

Residential	
3/4"	\$1,198.00
1"	\$1,203.00
1 1/2"	\$1,564.00
2"	\$1,738.00
Commercial	
3/4"	Actual Current Cost
1"	Actual Current Cost
1 1/2"	Actual Current Cost
2"	Actual Current Cost
Commercial/Industrial	
4"	Actual Current Cost
6"	Actual Current Cost
8"	Actual Current Cost
10"	Actual Current Cost
12"	Actual Current Cost

All New Taps – Actual Current Cost

Contact Water Department for current pricing – 574-258-1652

MISHAWAKA (INDIANA) MUNICIPAL WATER UTILITY

NON-RECURRING CHARGES

Q. Lead Service Line Replacement Tap Costs

(Does Not Include Meter)

Size	Cost
5/8" — 3/4"	\$1,198.00
1"	\$1,203.00
1 1/2"	\$1,564.00
2"	\$1,738.00

R. Land Improvement Charges

Non-Residential	
Water Main	Charge / Linear Foot
6"	\$12.00
8"	\$16.00
10"	\$20.00
12"	\$24.00
14"	\$28.00
16"	\$32.00
20"	\$40.00
24"	\$48.00
Residential	
1/2 of the current cost of a 6" water main (100 feet maximum)	

Revised on 03/05/2012

1st Reading 11-04-20
2nd Reading 11-14-20
Passed
Failed
Continued To

RECEIVED
DEBORAH S. BLOCK, MMC

OCT 29 2020

CITY CLERK
MISHAWAKA, IN

PROPOSED ORDINANCE NO. 2020-41

ORDINANCE NO. _____

An Ordinance of the City of Mishawaka authorizing the issuance of electric utility revenue bonds for the purpose of providing funds to apply on the cost of the construction of certain additions, extensions and improvements to the municipal electric utility of said City and improvements to building space for the utility, providing for the safeguarding of the interests of the owners of said bonds, other matters connected therewith, including the issuance of notes in anticipation of bonds, and repealing ordinances inconsistent herewith

WHEREAS, the City of Mishawaka (the "City") now owns and operates a municipal electric utility in said City in accordance with the provisions of Title 8, Article 1.5 of the Indiana Code, as in effect on the date of delivery of the bonds herein authorized (the "Act"); and

WHEREAS, the Common Council of the City now finds that certain additions, extensions and improvements to the electric utility are necessary and that new building space for the City's municipal utilities will require improvements; and that plans and estimates will be prepared and filed by the engineers employed by the City for the construction of said additions, extensions and improvements, as more fully described on Exhibit A attached hereto (the "Project"), which plans and estimates will be approved by all governmental authorities having jurisdiction; and

WHEREAS, the City has obtained engineers' estimates of the costs for the construction of the Project and will advertise for and receive bids for the Project, which bids will be subject to the City's obtaining funds to pay for said Project; that on the basis of said estimates, the cost of the Project, including incidental expenses, is in an amount not to exceed \$34,100,000; and

WHEREAS, the Common Council now finds that the City does not have sufficient funds on hand to apply on the costs of the Project and that it is necessary to finance the costs of the

Project by the issuance of electric utility revenue bonds and, if necessary, bond anticipation notes ("BANS"), in an aggregate principal amount not to exceed \$34,100,000; and

WHEREAS, the bonds to be issued pursuant to this ordinance will constitute a first charge against the Net Revenues (as hereinafter defined) of the electric utility, and are to be issued subject to the provisions of the laws of the State of Indiana, including, without limitation, the Act, and the terms and restrictions of this ordinance; and

WHEREAS, the Common Council has been advised the City's municipal sewage works and waterworks will also utilize the new building space being financed under this ordinance and the sewage works and waterworks will each contribute to the payment of the bonds issued hereunder with payments to the City's electric utility ("Sewage Works and Waterworks Payments"); and

WHEREAS, the Common Council has been advised that the Sewage Works and Waterworks Payments should be used to pay the principal of and interest on the bonds issued hereunder and shall be deemed as Net Revenues of the City's electric utility; and

WHEREAS, the City desires to authorize the issuance of BANS hereunder, if necessary, to provide interim financing for the Project and to authorize the refunding of the BANS, if issued; and

WHEREAS, the Common Council has been advised that it may be cost efficient to purchase municipal bond insurance and/or a debt service reserve surety for the bonds authorized herein; and

WHEREAS, the City's municipal electric utility is not subject to the jurisdiction of the Indiana Utility Regulatory Commission; and

WHEREAS, the Common Council now finds that all conditions precedent to the adoption of an ordinance authorizing the issuance of said bonds and BANs have been complied with in accordance with the provisions of the Act; now, therefore,

BE IT ORDAINED BY THE COMMON COUNCIL OF THE CITY OF MISHAWAKA, INDIANA:

Section 1. Issuance of Bonds and BANs. (a) The City, being the owner of and engaged in operating a municipal electric utility furnishing the City, its inhabitants and the residents adjacent thereto, with electric current for public, domestic and industrial uses, now proceed with the Project, the cost of which shall not exceed \$34,100,000, plus investment earnings on the BAN and bond proceeds, without further authorization from the Common Council, and the financing thereof by the issuance of revenue bonds pursuant to and in the manner prescribed by the Act, which revenue bonds shall be payable solely out of the Net Revenues (herein defined as gross revenues after deduction only for the reasonable expenses of operation, repair and maintenance, excluding transfers for payment in lieu of property taxes ("PILOTs")) of said electric utility, including all additions and improvements thereto and replacements thereof subsequently constructed or acquired of said electric utility. So long as the bonds issued under this ordinance are outstanding, the Net Revenues shall include the Sewage Works and Waterworks Payments. The terms "municipal electric utility," "electric utility," "utility," "electric utility system," "system," and words of like import where used in this ordinance shall be construed to mean and include the existing electric utility and all real estate and equipment used in connection therewith and appurtenances thereto, and all extensions,

additions and improvements thereto and replacements thereof now or at any time hereafter constructed or acquired.

(b) That said Project shall be constructed and installed in accordance with the plans and estimates to be prepared by the engineers employed for the Project.

(c) The City shall issue, if necessary, its BANs for the purpose of procuring interim financing to apply on the costs of said Project. The City shall issue its BANs in an amount not to exceed Thirty-four Million One Hundred Thousand Dollars (\$34,100,000) to be designated "Electric Utility Bond Anticipation Notes." The BANs shall be sold at not less than 99% of their par value, shall be numbered consecutively from 1 upward, shall be in multiples of \$1 as designated in the purchase agreement for the BANs, shall be dated as of the date of delivery thereof, and shall bear interest at a rate not to exceed 4% per annum (the exact rate or rates to be determined through bidding or negotiation) payable either (i) at maturity or upon redemption, or (ii) semiannually on January 1 and July 1 in each year, beginning with the first January 1 or the first July 1 which is at least six full months following delivery of the BANs, and semiannually thereafter. Principal on the BANs will be payable no later than five (5) years from their date of delivery. The BANs are subject to renewal or extension at an interest rate or rates not to exceed 4% per annum (the exact rate or rates to be determined through bidding or negotiation). The term of the BANs and all renewal BANs may not exceed five years from the date of delivery of the initial BANs. The BANs shall be registered in the name of the purchasers thereof. The BANs may be paid for in installments.

The BANs shall be issued pursuant to IC 5-1.5-8-6.1 if sold to the Indiana Bond Bank or pursuant to IC 5-1-14-5 if sold to a financial institution or any other purchaser. The principal of

and interest on the BANs shall be payable from the issuance of revenue bonds pursuant to and in the manner prescribed by the Act. Interest on the BANs is also payable from Net Revenues, subject to the prior payment of any bonds issued under this ordinance. The City may use any legally available revenues to pay the principal of and interest on the BANs. The revenue bonds will be payable solely out of and constitute a first charge against the Net Revenues of the electric utility of the City, including all additions and improvements thereto and replacements thereof subsequently constructed or acquired.

(d) The City shall issue its revenue bonds designated "Electric Utility Revenue Bonds of 20__" (to be completed with the year of issuance), in an aggregate principal amount not to exceed Thirty-four Million One Hundred Thousand Dollars (\$34,100,000) for the purpose of procuring funds to apply on the funding of the costs of said Project, refunding the BANs, if issued, and the payment of costs of issuance, including premiums for municipal bond insurance and/or a debt service reserve surety.

(e) The bonds shall be issued in the denomination of Five Thousand Dollars (\$5,000) each or integral multiples thereof, numbered consecutively from 1 upward, dated as of the date of delivery thereof, and shall bear interest at a rate or rates not exceeding 5% per annum (the exact rate or rates to be determined by bidding), payable semiannually on January 1 and July 1, beginning on the first January 1 or the first July 1 after delivery of the bonds as determined by the Controller, with the advice of the City's municipal advisor. The bonds shall be sold at a price not less than 99% of the par value thereof, and shall mature semiannually or be subject to mandatory sinking fund redemption on January 1 and July 1, over a period ending not later than

January 1, 2044 and in such principal amounts as will match the economic lives of the portions of the Project being financed under this ordinance.

Interest on the bonds shall be calculated according to a 360-day calendar year containing twelve 30-day months. Interest on the BANs may be calculated according to a 360-day calendar year containing twelve 30-day months or an actual 365-day calendar year.

All or a portion of the bonds may be issued as one or more term bonds, upon election of the successful bidder. Such term bonds shall have a stated maturity or maturities on January 1 or July 1 in the years as determined by the successful bidder, but in no event later than the final serial maturity of the bonds as established in accordance with the above paragraph. The term bonds shall be subject to mandatory sinking fund redemption and final payment(s) at maturity at 100% of the principal amount thereof, plus accrued interest to the redemption date, on principal payment dates which are hereinafter determined in accordance with the above paragraph.

Section 2. Registrar and Paying Agent; Book Entry Provisions. The Controller is hereby authorized to contract with a qualified institution to serve as Registrar and Paying Agent for the bonds ("Registrar" or "Paying Agent"). The Registrar is hereby charged with the responsibility of authenticating the bonds. The Controller is hereby authorized to enter into such agreements or understandings with the Registrar on the date of issuance of the bonds, or at any later date until all the bonds mature or are redeemed, as will enable the institution to perform the services required of registrar and paying agent for the bonds as set forth herein. The Controller is further authorized to pay such fees as the Registrar may charge for the services it provides as Registrar and Paying Agent and such fees may be paid from the Electric Utility Sinking Fund

created in Section 13 hereof to pay the principal of and interest on the bonds and fiscal agency charges.

As to the BANs and as to the bonds, if sold to a purchaser that does not object to such designation, the Controller may be designated the Registrar and Paying Agent and, in that case, will be charged with the performance of all of the duties and responsibilities of Registrar and Paying Agent.

The principal of the bonds shall be payable at the principal office of the Paying Agent. All payments of interest on the bonds and all payments of interest and principal on the BANs shall be paid by check mailed one business day prior to the payment date to the registered owners thereof as of the fifteenth day of the month immediately preceding such interest payment date ("Record Date"), at the addresses as they appear on the registration books kept by the Registrar or at such other address as is provided to the Paying Agent in writing by such registered owner. Notwithstanding anything to the contrary herein, the bonds shall not be required to be presented or surrendered to receive payment in connection with any mandatory sinking fund redemption until the final maturity date of the bonds or earlier payment in full of the bonds. If payment of principal or interest is made to a depository, payment shall be made by wire transfer on the payment date in same-day funds. If the payment date occurs on a date when financial institutions are not open for business, the wire transfer shall be made on the next succeeding business day. The Paying Agent shall be instructed to wire transfer payments by 1:00 p.m. (New York City time) so such payments are received at the depository by 2:30 p.m. (New York City time). Payments on the BANs may also be made by wire transfer. All payments on the bonds and BANs shall be made in any lawful money of the United States of

America, which on the date of such payment, shall be legal tender for the payment of public and private debts.

Each bond shall be transferable or exchangeable only upon the books of the City kept for that purpose at the principal office of the Registrar by the registered owner thereof in person, or by its attorney duly authorized in writing, upon surrender of such bond together with a written instrument of transfer or exchange satisfactory to the Registrar duly executed by the registered owner, or its attorney duly authorized in writing, and thereupon a new fully registered bond or bonds in an authorized aggregate principal amount and of the same maturity, shall be executed and delivered in the name of the transferee or transferees or the registered owner, as the case may be, in exchange therefor. The costs of such transfer or exchange shall be borne by the City except for any tax or governmental charge required to be paid with respect to the transfer or exchange, which taxes or governmental charges are payable by the person requesting such transfer or exchange. The City, Registrar and Paying Agent for the bonds may treat and consider the person in whose name such bonds are registered as the absolute owner thereof for all purposes including for the purpose of receiving payment of, or on account of, the principal thereof and interest due thereon.

Interest on such bonds shall be payable from the interest payment date to which interest has been paid next preceding the authentication date of the bonds unless the bonds are authenticated after the Record Date and on or before such interest payment date in which case they shall bear interest from such interest payment date, or unless the bonds are authenticated on or before the Record Date preceding the first interest payment date in which case they shall bear interest from the original date of the bonds until the principal shall be fully paid.

The City has determined that it may be beneficial to the City to have the bonds held by a central depository system pursuant to an agreement between the City and The Depository Trust Company, New York, New York ("Depository Trust Company") and have transfers of the bonds effected by book-entry on the books of the central depository system ("Book Entry System"). The bonds may be initially issued in the form of a separate single authenticated fully registered bond for the aggregate principal amount of each separate maturity of the bonds. In such case, upon initial issuance, the ownership of such bonds shall be registered in the register kept by the Registrar in the name of CEDE & CO., as nominee of the Depository Trust Company.

With respect to the bonds registered in the register kept by the Registrar in the name of CEDE & CO., as nominee of the Depository Trust Company, the City and the Paying Agent shall have no responsibility or obligation to any other holders or owners (including any beneficial owner ("Beneficial Owner")) of the bonds with respect to (i) the accuracy of the records of the Depository Trust Company, CEDE & CO., or any Beneficial Owner with respect to ownership questions, (ii) the delivery to any bondholder (including any Beneficial Owner) or any other person, other than the Depository Trust Company, of any notice with respect to the bonds including any notice of redemption, or (iii) the payment to any bondholder (including any Beneficial Owner) or any other person, other than the Depository Trust Company, of any amount with respect to the principal of, or premium, if any, or interest on the bonds except as otherwise provided herein.

No person other than the Depository Trust Company shall receive an authenticated bond evidencing an obligation of the City to make payments of the principal of and premium, if any, and interest on the bonds pursuant to this ordinance. The City and the Registrar and Paying

Agent may treat as and deem the Depository Trust Company or CEDE & CO. to be the absolute bondholder of each of the bonds for the purpose of (i) payment of the principal of and premium, if any, and interest on such bonds; (ii) giving notices of redemption and other notices permitted to be given to bondholders with respect to such bonds; (iii) registering transfers with respect to such bonds; (iv) obtaining any consent or other action required or permitted to be taken of or by bondholders; (v) voting; and (vi) for all other purposes whatsoever. The Paying Agent shall pay all principal of and premium, if any, and interest on the bonds only to or upon the order of the Depository Trust Company, and all such payments shall be valid and effective fully to satisfy and discharge the City's and the Paying Agent's obligations with respect to principal of and premium, if any, and interest on the bonds to the extent of the sum or sums so paid. Upon delivery by the Depository Trust Company to the City of written notice to the effect that the Depository Trust Company has determined to substitute a new nominee in place of CEDE & CO., and subject to the provisions herein with respect to consents, the words "CEDE & CO." in this ordinance shall refer to such new nominee of the Depository Trust Company. Notwithstanding any other provision hereof to the contrary, so long as any bond is registered in the name of CEDE & CO., as nominee of the Depository Trust Company, all payments with respect to the principal of and premium, if any, and interest on such bonds and all notices with respect to such bonds shall be made and given, respectively, to the Depository Trust Company as provided in a representation letter from the City to the Depository Trust Company.

Upon receipt by the City of written notice from the Depository Trust Company to the effect that the Depository Trust Company is unable or unwilling to discharge its responsibilities and no substitute depository willing to undertake the functions of the Depository Trust Company

hereunder can be found which is willing and able to undertake such functions upon reasonable and customary terms, then the bonds shall no longer be restricted to being registered in the register of the City kept by the Registrar in the name of CEDE & CO., as nominee of the Depository Trust Company, but may be registered in whatever name or names the bondholders transferring or exchanging the bonds shall designate, in accordance with the provisions of this ordinance.

If the City determines that it is in the best interest of the bondholders that they be able to obtain certificates for the fully registered bonds, the City may notify the Depository Trust Company and the Registrar, whereupon the Depository Trust Company will notify the Beneficial Owners of the availability through the Depository Trust Company of certificates for the bonds. In such event, the Registrar shall prepare, authenticate, transfer and exchange certificates for the bonds as requested by the Depository Trust Company and any Beneficial Owners in appropriate amounts, and whenever the Depository Trust Company requests the City and the Registrar to do so, the Registrar and the City will cooperate with the Depository Trust Company by taking appropriate action after reasonable notice (i) to make available one or more separate certificates evidencing the fully registered bonds of any Beneficial Owner's Depository Trust Company account or (ii) to arrange for another securities depository to maintain custody of certificates for and evidencing the bonds.

If the bonds shall no longer be restricted to being registered in the name of a Depository Trust Company, the Registrar shall cause said bonds to be printed in blank in such number as the Registrar shall determine to be necessary or customary; provided, however, that the Registrar

shall not be required to have such bonds printed until it shall have received from the City indemnification for all costs and expenses associated with such printing.

In connection with any notice or other communication to be provided to bondholders by the City or the Registrar with respect to any consent or other action to be taken by bondholders, the City or the Registrar, as the case may be, shall establish a record date for such consent or other action and give the Depository Trust Company notice of such record date not less than fifteen (15) calendar days in advance of such record date to the extent possible.

So long as said bonds are registered in the name of the Depository Trust Company or CEDE & CO. or any substitute nominee, the City and the Registrar and Paying Agent shall be entitled to request and to rely upon a certificate or other written representation from the Beneficial Owners of the bonds or from the Depository Trust Company on behalf of such Beneficial Owners stating the amount of their respective beneficial ownership interests in the bonds and setting forth the consent, advice, direction, demand or vote of the Beneficial Owners as of a record date selected by the Registrar and the Depository Trust Company, to the same extent as if such consent, advice, direction, demand or vote were made by the bondholders for purposes of this ordinance and the City and the Registrar and Paying Agent shall for such purposes treat the Beneficial Owners as the bondholders. Along with any such certificate or representation, the Registrar may request the Depository Trust Company to deliver, or cause to be delivered, to the Registrar a list of all Beneficial Owners of the bonds, together with the dollar amount of each Beneficial Owner's interest in the bonds and the current addresses of such Beneficial Owners.

The BANs may also be issued in book-entry form and in that case all of the provisions set forth in this Section 2 shall apply.

Section 3. Redemption of BANs and Bonds. (a) The BANs are prepayable by the City, in whole or in part, upon thirty days' notice to the owner of the BANs at any time after the BANs have been outstanding for 180 days without any premium.

(b) The bonds are redeemable at the option of the City, but no earlier than eight (8) years after their date of delivery and on any date thereafter, in whole or in part, in the order of maturity as determined by the City, and by lot within a maturity, on thirty (30) days' notice, at face value, with a premium not to exceed 1%, plus accrued interest to the date fixed for redemption. The exact redemption features shall be established by the Controller, with the advice of the City's municipal advisor, prior to the sale of the bonds.

If any bond is issued as a term bond, the Paying Agent shall credit against the mandatory sinking fund requirement for the bonds maturing as term bonds, and corresponding mandatory redemption obligation, in the order determined by the City, any bonds maturing as term bonds which have previously been redeemed (otherwise than as a result of a previous mandatory redemption requirement) or delivered to the Registrar for cancellation or purchased for cancellation by the Paying Agent and not theretofore applied as a credit against any redemption obligation. Each bond maturing as a term bond so delivered or canceled shall be credited by the Paying Agent at 100% of the principal amount thereof against the mandatory sinking fund obligation on such mandatory sinking fund date, and any excess of such amount shall be credited on future redemption obligations, and the principal amount of the bonds to be redeemed by operation of the mandatory sinking fund requirement shall be accordingly reduced; provided,

however, the Paying Agent shall credit only such bonds maturing as term bonds to the extent received on or before forty-five (45) days preceding the applicable mandatory redemption date.

If less than an entire maturity is called for redemption at one time, the bonds to be redeemed shall be selected by lot within a maturity by the Registrar. Each Five Thousand Dollars (\$5,000) principal amount shall be considered a separate bond for purposes of optional and mandatory redemption. If some bonds are to be redeemed by optional and mandatory sinking fund redemption on the same date, the Registrar shall select by lot the bonds for optional redemption before selecting the bonds by lot for the mandatory sinking fund redemption.

In either case, notice of such redemption shall be mailed to the registered owner not less than thirty (30) days prior to the date fixed for redemption at the address of the registered owner as shown on the registration record of the City as of the date which is forty-five (45) days prior to said redemption date, unless such redemption notice is waived by the owner of the bond or bonds redeemed. The notice shall specify the date and place of redemption and sufficient identification of the bonds called for redemption. The place of redemption may be determined by the City. Interest on the bonds so called for redemption shall cease on the redemption date fixed in such notice if sufficient funds are available at the place of redemption to pay the redemption price on the date so named.

Section 4. Execution. Each of said bonds and BANs shall be executed in the name of the City by the manual or facsimile signature of the Mayor, countersigned by the Controller, attested by the manual or facsimile signature of its Clerk and the seal of the City shall be affixed, imprinted or impressed to or on each of said bonds and BANs manually, by facsimile or any other means; and said officials, by the execution of a Signature and No Litigation Certificate,

shall adopt as and for their own proper signatures the facsimile signatures appearing on said bonds and BANs. In case any officer whose signature or facsimile signature appears on the bonds or BANs shall cease to be such officer before the delivery of the bonds or BANs, the signature of such officer shall nevertheless be valid and sufficient for all purposes the same as if such officer had remained in office until such delivery. The bonds shall also be authenticated by the manual signature of an authorized representative of the Registrar and no bond shall be valid or become obligatory for any purpose until the certificate of authentication thereon has been so executed.

Said bonds and BANs shall have all of the qualities and incidents of negotiable instruments under the laws of the State of Indiana, subject to the provisions for registration herein.

Section 5. Form of Bonds. The form and tenor of said bonds shall be substantially as follows, with such changes as are necessary, all blanks to be filled in properly prior to delivery thereof:

[Unless this certificate is presented by an authorized representative of The Depository Trust Company, a New York corporation ("DTC"), to the City of Mishawaka, Indiana, or its agent for registration of transfer, exchange, or payment, and any certificate issued is registered in the name of Cede & Co. or in such other name as is requested by an authorized representative of DTC (and any payment is made to Cede & Co. or to such other entity as is requested by an authorized representative of DTC), ANY TRANSFER, PLEDGE, OR OTHER USE HEREOF FOR VALUE OR OTHERWISE BY OR TO ANY PERSON IS WRONGFUL inasmuch as the registered owner hereof, Cede & Co., has an interest herein.]

UNITED STATES OF AMERICA
STATE OF INDIANA COUNTY OF ST. JOSEPH
CITY OF MISHAWAKA
ELECTRIC UTILITY REVENUE BOND OF 20

<u>Interest Rate</u>	<u>Maturity Date</u>	<u>Original Date</u>	<u>Authentication</u> <u>Date</u>	<u>CUSIP</u>
----------------------	----------------------	----------------------	--------------------------------------	--------------

REGISTERED OWNER:

PRINCIPAL SUM:

The City of Mishawaka ("City"), in St. Joseph County, State of Indiana, for value received, hereby promises to pay to the Registered Owner named above ("Registered Owner") or registered assigns, solely out of the special revenue fund hereinafter referred to, the Principal Sum set forth above ("Principal Sum") [on the Maturity Date set forth above] OR [on the dates and in the amounts as shown on Exhibit A attached hereto] (unless this bond is subject to and shall have been duly called for redemption and payment as provided for herein), and to pay interest hereon until the Principal Sum is paid at the [Interest Rate per annum specified above] OR interest rates per annum as set for on Exhibit A attached hereto], from the interest payment date to which interest has been paid next preceding the Authentication Date of this bond unless this bond is authenticated after the fifteenth day of the month preceding an interest payment date and on or before such interest payment date in which case it shall bear interest from such interest payment date, or unless this bond is authenticated on or before _____, in which case it shall bear interest from the Original Date, which interest is payable semiannually on **January 1 and July 1** beginning _____, 20____. Interest shall be calculated according to a 360-day calendar year containing twelve 30-day months.

The principal of this bond is payable at the principal office of _____ ("Registrar" or "Paying Agent"), in the City of _____, _____. All payments of interest on this bond shall be paid by check mailed one business day prior to the interest payment date to the Registered Owner hereof, as of the fifteenth day of the month immediately preceding such interest payment date, at the address as it appears on the registration books kept by the Registrar or at such other address as is provided to the Paying Agent in writing by the registered owner. [Notwithstanding anything to the contrary herein, this bond shall not be required to be presented or surrendered to receive payment in connection with any mandatory sinking fund redemption until the final maturity date of this bond or earlier payment in full of this bond.] If payment of principal or interest is made to a depository, payment shall be made by wire transfer on the payment date in same-day funds. If the payment date occurs on a date when financial institutions are not open for business, the wire transfer shall be made on the next succeeding business day. The Paying Agent shall be instructed to wire transfer payments by 1:00 p.m. (New York City time) so such payments are received at the depository by 2:30 p.m. (New York City time). All payments on the bond shall be made in any lawful money of the United States of America, which on the dates of such payment, shall be legal tender for the payment of public and private debts.

THE CITY SHALL NOT BE OBLIGATED TO PAY THIS BOND OR THE INTEREST HEREON EXCEPT FROM THE HEREINAFTER DESCRIBED SPECIAL REVENUE FUND, AND NEITHER THIS BOND NOR THE ISSUE OF WHICH IT IS A PART SHALL IN ANY

RESPECT CONSTITUTE A CORPORATE INDEBTEDNESS OF THE CITY WITHIN THE PROVISIONS AND LIMITATIONS OF THE CONSTITUTION OF THE STATE OF INDIANA.

This bond is one of an authorized issue of bonds of the City, of like date, tenor and effect, except as to numbering, interest rates and dates of maturity in the total amount of \$_____ ; numbered consecutively from 1 up; issued for the purpose of providing funds to pay the costs of certain additions, extensions and improvements to the municipally owned electric utility system of the City, [refunding notes issued in anticipation of bonds] and to pay issuance expenses [, including premiums for municipal bond insurance and/or a debt service reserve surety]. This bond is issued pursuant to an Ordinance adopted by the Common Council of the City on the ___ day of _____, 20__, entitled "An Ordinance of the City of Mishawaka authorizing the issuance of electric utility revenue bonds for the purpose of providing funds to apply on the cost of the construction of certain additions, extensions and improvements to the municipal electric utility of said City and improvements to building space for the utility, providing for the safeguarding of the interests of the owners of said bonds, other matters connected therewith, including the issuance of notes in anticipation of bonds, and repealing ordinances inconsistent herewith" ("Ordinance"), and in accordance with the provisions of Indiana law, including without limitation Indiana Code 8-1.5 as in effect on the date of delivery of the bonds of this issue ("Act"), the proceeds of which are to be applied solely to the construction of said additions, extensions and improvements, [refunding said interim notes issued in anticipation of bonds,] and the incidental expenses incurred in connection therewith.

Pursuant to the provisions of the Act and the Ordinance, the principal of and interest on this bond and all other bonds of said issue and any bonds hereafter issued on a parity herewith, are payable solely from the Electric Utility Sinking Fund created by the Ordinance ("Sinking Fund") to be provided from the Net Revenues (defined as the gross revenues after deduction only for the reasonable expenses of operation, repair and maintenance, excluding transfers for payment in lieu of property taxes) of the electric utility, including the works authorized by the Ordinance to be acquired and constructed and all additions and improvements thereto and replacements thereof subsequently constructed or acquired. So long as the bonds issued under the Ordinance are outstanding, the Net Revenues shall include the Sewage Works and Waterworks Payments (as defined in the Ordinance). This bond and the issue of which it is a part constitute a first charge upon the Net Revenues.

The City irrevocably pledges the entire Net Revenues of said electric utility to the prompt payment of the principal and interest on this bond, and any bonds ranking on a parity therewith, to the extent necessary for that purpose, and covenants that it will cause to be fixed, maintained and collected such rates and charges for service rendered by said utility as are sufficient in each year for the payment of the proper and reasonable expenses of operation, repair and maintenance of said utility, and for the payment of the sums required to be paid into its Sinking Fund under the provisions of the Ordinance and the Act. In the event the City or the proper officers thereof shall fail or refuse to so fix, maintain and collect such rates or charges, or if there be a default in

the payment of the interest on or principal of this bond, the owner of this bond shall have all of the rights and remedies provided for under Indiana law.

The City further covenants that it will set aside and pay into its Sinking Fund monthly, as available, or more often if necessary, a sufficient amount of the Net Revenues of said works for payment of (a) the interest on all bonds which by their terms are payable from the revenues of said electric utility, as such interest shall fall due, (b) the necessary fiscal agency charges for paying bonds and interest, (c) the principal of all bonds which by their terms are payable from the revenues of said electric utility, as such principal shall fall due, and (d) an additional amount as a margin of safety to [create and] maintain the reserve required by the Ordinance. Such required payments shall constitute a first charge upon all the Net Revenues of said electric utility.

The bonds of this issue maturing on or after _____ 1, 20____, are redeemable at the option of the City on _____ 1, 20____, or any date thereafter, on thirty (30) days' notice, in whole or in part, in the order of maturity determined by the City and by lot within a maturity, at face value together with the following premiums:

_____% if redeemed on _____ 1, 20____,
or thereafter on or before _____, 20____;
_____% if redeemed on _____ 1, 20____,
or thereafter on or before _____, 20____;
0% if redeemed on _____ 1, 20____,
or thereafter prior to maturity;

plus, in each case accrued interest to the date fixed for redemption.

[The bonds maturing on _____ 1, _____ are subject to mandatory sinking fund redemption prior to maturity, at a redemption price equal to the principal amount thereof plus accrued interest, on the dates and in the amounts set forth below:

_____ Term Bond

<u>Date</u>	<u>Amount</u>
-------------	---------------

*

*Final Maturity]

If less than an entire maturity is called for redemption at one time, the bonds to be redeemed shall be selected by lot within a maturity by the Registrar. Each Five Thousand Dollars (\$5,000) principal amount shall be considered a separate bond for purposes of optional [and mandatory] redemption. [If some bonds are to be redeemed by optional and mandatory

sinking fund redemption on the same date, the Registrar shall select by lot the bonds for optional redemption before selecting the bonds by lot for the mandatory sinking fund redemption.]

In either case, notice of such redemption shall be mailed to the address of the registered owner as shown on the registration records of the City, as of the date which is forty-five (45) days prior to such redemption date, not less than thirty (30) days prior to the date fixed for redemption. The notice shall specify the date and place of redemption and sufficient identification of the bonds called for redemption. The place of redemption may be determined by the City. Interest on the bonds so called for redemption shall cease on the redemption date fixed in such notice if sufficient funds are available at the place of redemption to pay the redemption price on the date so named.

If this bond shall not be presented for payment or redemption on the date fixed therefor, the City may deposit in trust with its depository bank, an amount sufficient to pay such bond or the redemption price, as the case may be, and thereafter the registered owner shall look only to the funds so deposited in trust with said bank for payment and the City shall have no further obligation or liability in respect thereto.

This bond is transferable or exchangeable only upon the books of the City kept for that purpose at the office of the Registrar, by the Registered Owner hereof in person, or by its attorney duly authorized in writing, upon surrender of this bond together with a written instrument of transfer or exchange satisfactory to the Registrar duly executed by the Registered Owner, or its attorney duly authorized in writing, and thereupon a new fully registered bond or bonds in an authorized aggregate principal amount and of the same maturity, shall be executed and delivered in the name of the transferee or transferees or to the Registered Owner, as the case may be, in exchange therefor. This bond may be transferred or exchanged without cost to the Registered Owner except for any tax or governmental charges required with respect to the transfer. The City, the Registrar and any paying agent for this bond may treat and consider the person in whose name this bond is registered as the absolute owner hereof for all purposes including for the purpose of receiving payment of, or on account of, the principal hereof and interest due hereon.

[The bonds shall be initially issued in a Book Entry System (as defined in the Ordinance). The provisions of this bond and of the Ordinance are subject in all respects to the provisions of the Letter of Representations between the City and The Depository Trust Company, or any substitute agreement, effecting such Book Entry System.]

THE OWNER OF THIS BOND, BY THE ACCEPTANCE HEREOF, HEREBY AGREES TO ALL THE TERMS AND PROVISIONS CONTAINED IN THE ORDINANCE. This bond is subject to defeasance prior to payment or redemption as provided in the Ordinance. The Ordinance may be amended without the consent of the owners of the bonds as provided in the Ordinance if the Common Council determines, in its sole discretion, that the amendment shall not adversely affect the rights of any of the owners of the bonds.

The bonds maturing in any one year are issuable only in fully registered form in the denomination of \$5,000 or any integral multiple thereof not exceeding the aggregate principal amount of the bonds maturing in such year.

It is hereby certified and recited that all acts, conditions and things required to be done precedent to and in the execution, issuance and delivery of this bond have been done and performed in regular and due form as provided by law.

This bond shall not be valid or become obligatory for any purpose until the certificate of authentication hereon shall have been executed by an authorized representative of the Registrar.

IN WITNESS WHEREOF, the City of Mishawaka, in St. Joseph County, Indiana, has caused this bond to be executed in its corporate name by the manual or facsimile signature of its Mayor, countersigned by the manual or facsimile signature of the Controller, its corporate seal to be hereunto affixed, imprinted or impressed by any means and attested manually or by facsimile by its Clerk.

CITY OF MISHAWAKA, INDIANA

(SEAL.)

By _____
Mayor

COUNTERSIGNED:

By: _____
Controller

Attest:

Clerk

REGISTRAR'S CERTIFICATE OF AUTHENTICATION

This bond is one of the bonds described in the within-mentioned Ordinance.

as Registrar

By _____
Authorized Representative

ASSIGNMENT

FOR VALUE RECEIVED the undersigned hereby sells, assigns and transfers unto _____ the within bond and all rights thereunder, and hereby irrevocably constitutes and appoints _____, attorney, to transfer the within bond in the books kept for the registration thereof with full power of substitution in the premises.

NOTICE: Signature(s) must be guaranteed by an eligible guarantor institution participating in a Securities Transfer Association recognized signature guarantee program.

NOTICE: The signature to this assignment must correspond with the name as it appears on the face of the within bond in every particular, without alteration or enlargement or any change whatsoever.

Section 6. Authorization for Preparation and Sale of the BANs and the Bonds; Official Statement; Bond Insurance. The Controller is hereby authorized and directed to have said bonds and BANs prepared, and the Mayor, Controller and Clerk are hereby authorized and directed to execute and attest said bonds and BANs in the form and manner herein provided. The Controller is hereby authorized and directed to deliver said bonds and BANs to the purchasers thereof after sale made in accordance with the provisions of this ordinance, provided that at the time of said delivery the Controller shall collect the full amount which the purchaser has agreed to pay therefor, which amount shall not be less than 99% of the par value of the BANs or not less than 99% of the par value of said bonds, as the case may be, plus accrued interest to the date of delivery. The City may receive payment on the BANs in installments. The bonds herein authorized, when fully paid for and delivered to the purchaser, shall be the binding

special revenue obligations of the City, payable out of the Net Revenues of the electric utility to be set aside into the Electric Utility Sinking Fund, as herein provided. The proceeds derived from the sale of said bonds shall be and are hereby set aside for payment of the costs of the Project, the refunding of the BANs, if issued, and the expenses necessarily incurred in connection with the bonds and BANs. The proper officers of the City are hereby directed to draw all proper and necessary warrants, and to do whatever acts and things which may be necessary to carry out the provisions of this ordinance.

Distribution of an Official Statement (preliminary and final) prepared by Baker Tilly Municipal Advisors, LLC on behalf of the City, is hereby authorized and approved and the Mayor or the Controller are authorized and directed to execute the Official Statement on behalf of the City in a form consistent with this ordinance. The Mayor or the Controller is authorized to designate the preliminary Official Statement as "nearly final" for purposes of Rule 15c2-12 as promulgated by the Securities and Exchange Commission ("Rule").

If an Official Statement is not required upon delivery of the bonds, the City shall obtain an investment letter from the purchaser of the bonds which satisfies federal and state securities laws applicable to the bonds.

In the event the financial advisor to the City certifies to the City that it would be economically advantageous for the City to obtain a municipal bond insurance policy the City hereby authorizes the purchase of such an insurance policy. The acquisition of a municipal bond insurance policy is hereby deemed economically advantageous in the event the difference between the present value cost of (a) the total debt service on the bonds if issued without municipal bond insurance and (b) the total debt service on the bonds if issued with municipal

bond insurance, is greater than the cost of the premium on the municipal bond insurance policy. If such an insurance policy is purchased, the Mayor and the Controller are hereby authorized to execute and deliver all agreements with the provider of the policy to the extent necessary to comply with the terms of such insurance policy and the commitment to issue such policy. Such agreement shall be deemed a part of this ordinance for all purposes and is hereby incorporated herein by reference.

Section 7. Sale of Bonds; Award of Bonds. Prior to the sale of said bonds, the Controller shall cause to be published either (i) a notice of such sale in the newspaper or newspapers which meet the requirements of IC 5-3-1, two times, at least one week apart, the first publication made at least fifteen (15) days before the date of the sale and the second publication being made at least three (3) days before the date of the sale, or (ii) a notice of intent to sell in the newspaper or newspapers which meet the requirements of IC 5-3-1 and the *Indianapolis Business Journal*, all in accordance with IC 5-1-11 and IC 5-3-1. A notice or summary notice of sale may also be published in the *Court & Commercial Record* or in *The Bond Buyer* in New York, New York. The notice shall state the character and amount of the bonds, the maximum rates of interest thereon, the terms and conditions upon which bids will be received and the sale made, and such other information as the Controller and the attorneys employed by the City shall deem advisable, and any summary notice may contain any information deemed so advisable. Said notice shall provide, among other things, that bidders for said bonds will be required to name the rate or rates of interest which the bonds are to bear, not exceeding the maximum rate hereinbefore fixed, and that such interest rate or rates shall be in multiples of one-eighth (1/8) or one-hundredth (1/100) of one percent (1%). The notice may provide that the rate bid on a

maturity shall be equal to or greater than the rate bid on the immediately preceding maturity. The notice will also state that the winning bidder will agree to assist the City in establishing the issue price of the bonds under Treas. Reg. Section 1.148-1(f) ("Issue Price Regulation"). The criteria for establishing the issue price under the Issue Price Regulation shall be set forth in the preliminary Official Statement and/or the bid form. The notice may provide, among other things, that electronic bidding will be permitted and that the winning bidder shall be required to submit a certified or cashier's check or wire transfer in an amount equal to 1% of the principal amount of the bonds described in the notice within twenty-four hours of the sale and that in the event the successful bidder shall fail or refuse to accept delivery of the bonds and pay for the same as soon as the bonds are ready for delivery, or at the time fixed in the notice of sale, then said deposit and the proceeds thereof shall be the property of the City and shall be considered as its liquidated damages on account of such default. No conditional bids or bids for less than 99% of the par value of the bonds will be considered. The opinion of Ice Miller LLP, bond counsel of Indianapolis, Indiana, approving the legality of said bonds will be furnished to the purchaser at the expense of the City.

The bonds shall be awarded by the Controller to the best bidder who has submitted its bid in accordance with the terms of this ordinance and the notice. The best bidder will be the one who offers the lowest net interest cost to the City to be determined by computing the total interest on all of the bonds to their maturities, adding thereto the discount bid, if any, and deducting therefrom the premium bid, if any. The right to reject any and all bids is hereby reserved. If an acceptable bid is not received on the date of sale, the sale may be continued from day to day thereafter without further advertisement for a period of thirty (30) days, during which

time no bid which provides a higher net interest cost to the City than the best bid received at the time of the advertised sale will be considered.

Section 8. Financial Records and Accounts; Continuing Disclosure. The City shall keep proper records and books of account, separate from all of its other records and accounts, in which complete and correct entries shall be made showing all revenues received on account of the operation of said electric utility and all disbursements made therefrom and all transactions relating to said electric utility. Copies of all such statements and reports shall be kept on file in the office of the Clerk. If the bonds or BANs are subject to Rule 15c2-12 of the Securities and Exchange Commission ("Rule"), the Mayor and the Controller are authorized to execute and deliver a continuing disclosure undertaking agreement in satisfaction of the Rule. Notwithstanding any other provisions of this ordinance, failure of the City to comply with the continuing disclosure undertaking shall not be considered an event of default under the bonds or this ordinance.

Section 9. Pledge of Net Revenues. (a) The BANs, if issued, shall be payable from the proceeds of the bonds, and interest on the BANs shall also be payable from Net Revenues, subject to the prior payment of any bonds issued under this ordinance.

(b) The interest on and principal of the bonds issued pursuant to the provisions of this ordinance, and any bonds hereinafter issued on a parity therewith, shall constitute a first charge on all the Net Revenues, and such Net Revenues are hereby irrevocably pledged to the payment of the interest on and principal of such bonds, to the extent necessary for that purpose.

Section 10. Construction Account. Any accrued interest and any premium received at the time of delivery of the bonds shall be deposited in the Electric Utility Sinking Fund and

credited to the Bond and Interest Account thereof. The remaining proceeds from the sale of said bonds, to the extent not used to refund BANs, and BAN proceeds shall upon receipt be deposited in a bank or banks which are legally designated and qualified depositories of the City, in a special account or accounts to be designated as "City of Mishawaka, Electric Utility Construction Account." The funds in each of such special accounts shall be deposited, held, secured or invested in accordance with the laws of the State of Indiana relating to the depositing, holding, securing or investing of public funds. The funds in such special account or accounts and any income derived from the investment hereof shall be expended only for the purpose of paying the cost of the Project, refunding the BANs, if issued, and the incidental expenses incurred in connection therewith and with the issuance of the bonds and BANs. Any balance or balances remaining unexpended in such special account or accounts after the completion of the Project, which are not required to meet unpaid obligations incurred in connection with the construction of the Project, shall either (i) be deposited in the Electric Utility Sinking Fund and used solely for the purposes of said Fund, or (ii) be used for the same purpose or type of project for which the bonds were issued, all in accordance with IC 5-1-13, as amended.

Section 11. Use of Revenues. All revenues derived from the operation of the electric utility and from the collection of electric rates and charges shall be segregated and kept separate and apart from all other funds and accounts of the City. Said revenues shall be deposited into the Operation and Maintenance Fund, the Electric Utility Sinking Fund and the Improvement Fund of the utility in accordance with this ordinance.

Section 12. Operation and Maintenance Fund. The Operation and Maintenance Fund ("O&M Fund"), is hereby created and there shall be credited to the O&M Fund as of the last day

of each calendar month a sufficient amount of the revenues of the electric utility so that the balance in the O&M Fund shall be sufficient to pay the reasonable expenses of operation, repair and maintenance for the next succeeding calendar month. The moneys credited to this O&M Fund shall be used for the payment of the reasonable operation, repair and maintenance expenses of the electric utility on a day-to-day basis, but none of the moneys in such O&M Fund shall be used for PII.OTs, depreciation, replacements, improvements, extensions or additions. Any balance in the O&M Fund in excess of the expected expenses of operation, repair and maintenance for the next succeeding month may be transferred to the Electric Utility Sinking Fund if necessary to prevent a default in the payment of principal or interest on the then outstanding bonds.

Section 13. Electric Utility Sinking Fund. (a) The Electric Utility Sinking Fund ("Sinking Fund") is hereby created and constitutes the sinking fund for the payment of the principal of and interest on the bonds. There shall be set aside and deposited in the Sinking Fund, as available, and as hereinafter provided a sufficient amount of the Net Revenues of said electric utility to meet the requirements of the Bond and Interest Account and of the Debt Service Reserve Account hereby created in the Sinking Fund. Such payments shall continue until the balance in the Bond and Interest Account, plus the balance in the Debt Service Reserve Account, equals the principal of and interest on all of the then outstanding bonds to the final maturity thereof.

(b) Bond and Interest Account. So long as the bonds are outstanding, the City shall deposit all Sewage Works and Waterworks Payments, upon receipt, into the Bond and Interest Account and treat such payments as Net Revenues. There shall be credited on the last day of

each calendar month to the Bond and Interest Account an amount equal to the sum of at least one-sixth ($1/6$) of the interest on and at least one-sixth ($1/6$) of the principal of such outstanding bonds which will be payable on the then next succeeding interest and principal payment date, until the amount of interest and principal payable on the then next succeeding principal and interest payment dates shall have been so credited. There shall similarly be credited to the account any amounts necessary to pay the bank fiscal agency charges for paying principal and interest on said bonds as the same become payable. The City shall, from the sums deposited in the Sinking Fund and credited to the Bond and Interest Account, remit promptly to the bank fiscal agency sufficient moneys to pay the principal and interest on the due dates thereof together with the amount of bank fiscal agency charges.

(c) Debt Service Reserve Account. The Debt Service Reserve Account ("Reserve Account") is hereby created. On the date of delivery of the bonds, bond proceeds, funds on hand of the electric utility or a combination thereof may be deposited into the Reserve Account. The initial deposit or the balance accumulated in the Reserve Account shall equal but not exceed the least of (i) the maximum annual debt service on the bonds, (ii) 125% of the average annual debt service on the bonds or (iii) 10% of the of the stated principal amount or issue price, as applicable, of the bonds ("Reserve Requirement"). If the initial deposit into the Reserve Account does not cause the balance therein to equal the Reserve Requirement or if no deposit is made, the City shall deposit a sum of Net Revenues into the Reserve Account on the last day of each calendar month until the balance therein equals the Reserve Requirement. The monthly deposits shall be equal in amount and sufficient to accumulate the Reserve Requirement within five years of the date of delivery of the bonds.

The Reserve Account may be satisfied with cash, a debt service reserve surety bond or a combination thereof. If such surety bond is purchased, the Mayor and the Controller are hereby authorized to execute and deliver all agreements with the provider of the surety bond to the extent necessary to comply with the terms of such surety bond and the commitment to issue such surety. Such agreement shall be deemed a part of this ordinance for all purposes and is hereby incorporated herein by reference.

The Reserve Account shall constitute the margin for safety and as protection against default in the payment of principal of and interest on the bonds and any parity bonds, and moneys in the Reserve Account shall be used to pay current principal and interest on the bonds and any parity bonds to the extent that moneys in the Bond and Interest Account are insufficient for that purpose. Any deficiency in the balance maintained in the Reserve Account shall be made up from the next available Net Revenues remaining after credits into the Bond and Interest Account. In the event moneys in the Reserve Account are transferred to the Bond and Interest Account to pay interest and principal on the bonds, then such depletion of the balance in the Reserve Account shall be made up from the next available Net Revenues after the credits into the Bond and Interest Account hereinbefore provided for. Any moneys in the Reserve Account in excess of the Reserve Requirement shall be transferred to the Improvement Fund.

Section 14. Improvement Fund. There is hereby created a special fund designated the Improvement Fund ("Improvement Fund"). There shall be deposited into the Improvement Fund on or before the last day of each calendar month any excess revenues remaining after making the required deposits into the O&M Fund and the Sinking Fund. The Improvement Fund shall be expended in making good depreciation in the property of said electric utility, or applied on the

cost of the improvements herein referred to or future replacements, extensions, additions and improvements to such property, and to make payments representing PILOTs. The City reserves the right to transfer PILOTs from the Improvement Fund no more frequently than semiannually, in accordance with the Act, and only if all required transfers have been made to the Sinking Fund and the O&M Fund and the Accounts of the Sinking Fund contain the required balances as of the date the PILOTs are paid. The Improvement Fund may also be used to pay principal of and interest on the BANs. Funds may also be transferred to the Bond and Interest Account to prevent a default on all outstanding bonds, or, if necessary, to eliminate any deficiencies in credits to or minimum balance in the Reserve Account of the Sinking Fund or may be transferred to the O&M Fund to meet unforeseen contingencies in the operation, repair and maintenance of the electric utility.

Section 15. Maintenance of Accounts. The Sinking Fund shall be deposited in and maintained as a separate account or accounts from all other accounts of the City. The O&M Fund and the Improvement Fund may be maintained in a single account or accounts but such account or accounts shall likewise be maintained separate and apart from all other accounts of the City and apart from the Sinking Fund account or accounts. This section shall not be construed as requiring the City to maintain separate bank accounts. All moneys deposited in said accounts shall be deposited, held and secured as public funds in accordance with the public depository laws of the State of Indiana, provided that moneys therein may be invested in accordance with the applicable laws, including particularly Indiana Code, Title 5, Article 13, as amended or supplemented, and in the event of such investment the income therefrom shall become a part of the funds invested and shall be used only as provided in this ordinance.

Section 16. Defeasance of the Bonds. If, when the bonds issued hereunder or any portion thereof shall have become due and payable in accordance with their terms or shall have been duly called for redemption or irrevocable instructions to call the bonds or any portion thereof for redemption shall have been given, and the whole amount of the principal and the interest and the premium, if any, so due and payable upon all of the bonds or any portion thereof then outstanding shall be paid; or (i) sufficient moneys, or (ii) direct obligations of, or obligations the principal of and interest on which are unconditionally guaranteed by the United States of America, the principal of and the interest on which when due will provide sufficient moneys for such purpose, shall be held in trust for such purpose, and provision shall also be made for paying all fees and expenses for the redemption, then and in that case the bonds issued hereunder or any designated portion thereof shall no longer be deemed outstanding or entitled to the pledge of the Net Revenues of the City's electric utility.

Section 17. Rate Covenant. The City shall by ordinance establish, maintain and collect reasonable and just rates and charges for facilities and services afforded and rendered by said electric utility, which shall to the extent permitted by law produce sufficient revenues at all times to pay all the legal and other necessary expense incident to the operation of such electric utility, to include maintenance costs, operating charges, upkeep, repairs, interest charges on bonds or other obligations, to provide the sinking fund and reserve account as herein required for the liquidation of bonds or other evidences of indebtedness, to provide adequate funds to be used as working capital, as well as funds for making extensions, additions, improvements and replacements, and also, for the payment of any taxes that may be assessed against such electric utility, it being the intent and purpose hereof that such charges shall produce an income sufficient

to maintain such electric utility property in a sound physical and financial condition to render adequate and efficient service. So long as any of the bonds herein authorized are outstanding, none of the facilities or services afforded or rendered by said system shall be furnished without a reasonable and just charge being made therefor. The City shall pay like charges for any and all services rendered by said electric utility to the City, and all such payments shall be deemed to be revenues of the electric utility. Such rates or charges shall, if necessary, be changed and readjusted from time to time so that the revenues therefrom shall always be sufficient to meet the expenses of operation and maintenance, and the requirements of the Sinking Fund.

Section 18. Additional Bond Provisions. (a) The City reserves the right to authorize and issue additional BANs at any time ranking on a parity with the BANs. The City also reserves the right to authorize and issue additional bonds payable out of the revenues of its electric utility ranking on a parity with the bonds authorized by this ordinance for the purpose of financing the cost of future additions, extensions, and improvements to the electric utility, or to refund obligations, subject to the following conditions:

(b) The interest on and principal of all bonds or other obligations payable from the revenues of the electric utility shall have been paid to date in accordance with the terms thereof and all credits required to be made to the Sinking Fund and the accounts thereof shall have been made to date.

(c) The Net Revenues of the electric utility in the fiscal year immediately preceding the issuance of any such bonds ranking on a parity with the bonds authorized by this ordinance shall not be less than one hundred twenty-five percent (125%) of the maximum annual interest and principal requirements of the then outstanding bonds payable from Net Revenues and the

additional parity bonds proposed to be issued; or, prior to the issuance of said parity bonds, the electric rates and charges shall be increased sufficiently so that said increased rates and charges applied to the previous fiscal year's operations would have produced Net Revenues for said year equal to not less than one hundred twenty-five percent (125%) of the maximum annual interest and principal requirements of the then outstanding bonds and the additional parity bonds proposed to be issued. For the purposes of this subsection, the records of the electric utility shall be analyzed and all showings shall be prepared by a certified public accountant retained by the City for that purpose. The term "Net Revenues" as used in this subsection shall be construed to mean the revenues remaining after the reasonable expenses of operation, repair and maintenance, including any payments required under any power sales or supply agreement or agreements, has been paid or provided for, excluding depreciation expense and interest costs on bonds.

(d) The interest on the additional parity bonds shall be payable semiannually on January 1 and July 1, and the principal shall be payable semiannually on January 1 and July 1.

Section 19. Further Covenants of the City; Maintenance, Insurance, Pledge Not To Encumber, Subordinate Indebtedness, and Contract with Bondholders. For the purpose of further safeguarding the interests of the owners of the BANs and the bonds, it is hereby specifically provided as follows:

(a) All contracts let by the City in connection with the construction of the Project shall be let after due advertisement as required by the laws of the State of Indiana, and all contractors shall be required to furnish surety bonds in an amount equal to one hundred percent (100%) of the amount of such contracts, to insure the completion of said contracts, in accordance with their terms, and such contractors shall also be required to carry such employers' liability

and public liability insurance as are required under the laws of the State of Indiana in the case of public contracts, and shall be governed in all respects by the laws of the State of Indiana relating to public contracts.

(b) The Project shall be constructed under the supervision and subject to the approval of such competent engineer as shall be designated by the City. All estimates for work done or material furnished shall be examined by the engineer and approved by the City prior to payment therefor.

(c) The City shall at all times maintain its electric utility in good condition and operate the same in an efficient manner and at a reasonable cost.

(d) So long as the BANs and the bonds herein authorized are outstanding, the City shall maintain insurance on the insurable parts of said electric utility of a kind and in an amount such as would normally be carried by private companies engaged in a similar type of business. All insurance shall be placed with responsible insurance companies qualified to do business under the laws of the State of Indiana. Insurance proceeds shall be used in replacing the property destroyed or damaged; or if not used for that purpose shall be deposited in the Sinking Fund. As an alternative to maintaining such insurance, the City may maintain a self-insurance program with catastrophic or similar coverage so long as such program meets the requirements of any applicable laws or regulations and is maintained in a manner consistent with programs maintained by similarly situated municipalities.

(e) So long as the BANs and the bonds herein authorized are outstanding, the City shall not mortgage, pledge or otherwise encumber such utility or any part thereof, nor shall it

sell, lease or otherwise dispose of any portion thereof except equipment or property which may become worn out, obsolete or no longer suitable for use in the electric utility.

(f) Except as hereinbefore provided in Section 18, so long as the bonds herein authorized are outstanding, no additional bonds or other obligations pledging any portion of the revenues of said electric utility shall be authorized, executed or issued by the City except such as shall be made subordinate and junior in all respects to the bonds herein authorized, unless the bonds herein authorized have been defeased and sufficient funds to effect the retirement have been deposited in accordance with the terms and conditions of said bonds and Section 16 of this ordinance.

(g) The provisions of this ordinance shall constitute a contract by and between the City and the owners of the BANs and the bonds herein authorized, and after the issuance of said BANs or bonds, this ordinance shall not be repealed or amended in any respect which will adversely affect the rights of the owners of said bonds or BANs, nor shall the Common Council adopt any law, ordinance or resolution which in any way adversely affects the rights of such owners so long as said BANs or bonds, or the interest thereon, remain unpaid. Excluding the changes set forth in Section 22(a)-(f), the ordinance may be amended, however, without the consent of bond or BAN owners, if the Common Council determines, in its sole discretion, that such amendment would not adversely affect the owners of the BANs or bonds.

(h) The provisions of this ordinance shall be construed to create a trust in the proceeds of the sale of the BANs and bonds herein authorized for the uses and purposes herein set forth, and the owners of the BANs and bonds shall retain a lien on such proceeds until the same are applied in accordance with the provisions of this ordinance and of said governing Act.

The provisions of this ordinance shall also be construed to create a trust in the portion of Net Revenues herein directed to be set apart and paid into the Sinking Fund for the uses and purposes of said Fund as in this ordinance set forth. The owners of said BANs and bonds shall have all the rights, remedies and privileges set forth under Indiana law in the event the City shall default in the payment of the interest on or principal of the BANs or bonds, or fail or refuse to fix and collect sufficient rates and charges for said purposes, or shall fail or refuse to operate and maintain said system and to apply properly the revenues derived from the operation thereof.

Section 20. Investment of Moneys. (a) The Controller is hereby authorized to invest moneys pursuant to IC 5-1-14-3 and the provisions of this ordinance (subject to applicable requirements of federal law to insure such yield is the then current market rate) to the extent necessary or advisable to preserve the exclusion from gross income of interest on the BANs and bonds under federal law.

(b) The Controller shall keep full and accurate records of investment earnings and income from moneys held in the funds and accounts referenced herein. In order to comply with the provisions of the ordinance, the Controller is hereby authorized and directed to employ consultants or attorneys from time to time to advise the City as to requirements of federal law to preserve the tax exclusion. The Controller may pay any fees as operation expenses of the electric utility.

Section 21. Tax Covenants. In order to preserve the exclusion of interest on the bonds and BANs from gross income for federal tax purposes under Section 103 of the Internal Revenue Code of 1986 as existing on the date of issuance of the bonds or BANs, as the case may be

("Code"), and as an inducement to purchasers of the bonds and BANs, the City represents, covenants and agrees that:

(a) The Project and the electric utility will be available for use by members of the general public. Use by a member of the general public means use by natural persons not engaged in a trade or business. No person or entity other than the City or another state or local governmental unit will use more than 10% of the proceeds of the bonds or BANs or property financed by the bond or BAN proceeds other than as a member of the general public. No person or entity other than the City or another state or local governmental unit will own property financed by bond or BAN proceeds or will have any actual or beneficial use of such property pursuant to a lease, management, service or incentive payment contract, an arrangement including take-or-pay or other type of output contracts or any other type of arrangement that conveys other special legal entitlements and differentiates that person's or entity's use of such property from use by the general public, unless such uses in the aggregate relate to no more than 10% of the proceeds of the bonds or BANs, as the case may be. If the City enters into a management contract for all or a portion of the electric utility or the Project, the terms of the contract will comply with the Regulations and IRS Revenue Procedure 2017-13, as amended, supplemented or superseded from time to time, so that the contract will not give rise to private business use under the Code and the Regulations unless such use in the aggregate will not relate to more than 10% of the proceeds of the BANs or bonds, as the case may be.

(b) No more than 10% of the principal of or interest on the bonds or BANs is (under the terms of the bonds, BANs, this ordinance or any underlying arrangement), directly or indirectly, secured by an interest in property used or to be used for private business use or

payments in respect of such property, or to be derived from payments (whether or not to the City) in respect of such property or borrowed money used or to be used for a private business use.

(c) No more than 5% of the bond or BAN proceeds will be loaned to any person or entity other than another state or local governmental unit. No more than 5% of the bond or BAN proceeds will be transferred, directly or indirectly, or deemed transferred to a nongovernmental person in any manner that would in substance constitute a loan of the bond or BAN proceeds.

(d) The City reasonably expects, as of the date hereof, that the bonds and BANs will not meet either the private business use test described in paragraph (a) and (b) above or the private loan test described in paragraph (c) above during the entire term of the bonds or BANs, as the case may be.

(e) No more than 5% of the proceeds of the bonds or BANs will be attributable to private business use as described in (a) and private security or payments described in (b) attributable to unrelated or disproportionate private business use. For this purpose, the private business use test is applied by taking into account only use that is not related to any government use of proceeds of the issue (Unrelated Use) and use that is related but disproportionate to any governmental use of those proceeds (Disproportionate Use).

(f) The City will not take any action nor fail to take any action with respect to the bonds or BANs that would result in the loss of the exclusion from gross income for federal tax purposes of interest on the bonds or BANs pursuant to Section 103 of the Code, nor will the City act in any other manner which would adversely affect such exclusion, and it will not make any investment or do any other act or thing during the period that the bonds or BANs are outstanding

which would cause the bonds or BANs to be private activity bonds under the meaning of Section 141 of the Code.

(g) It shall be not an event of default under this ordinance if the interest on any bonds or BANs is not excludable from gross income for federal tax purposes or otherwise pursuant to any provision of the Code which is not currently in effect and in existence on the date of issuance of the bonds or BANs, as the case may be.

(h) The City represents that it will rebate any arbitrage profits to the United States in accordance with the Code.

(i) These covenants are based solely on current law in effect and in existence on the date of delivery of the bonds or BANs, as the case may be.

Section 22. Amendments with Consent of Bondholders. Subject to the terms and provisions contained in this section, and not otherwise, the owners of not less than sixty-six and two-thirds percent (66 2/3%) in aggregate principal amount of the bonds issued pursuant to this ordinance and then outstanding shall have the right from time to time, anything contained in this ordinance to the contrary notwithstanding, to consent to and approve the adoption by the Common Council of the City of such ordinance or ordinances supplemental hereto or amendatory hereof, as shall be deemed necessary or desirable by the City for the purpose of modifying, altering, amending, adding to or rescinding in any particular any of the terms or provisions contained in this ordinance, or in any supplemental ordinance; provided, however, that nothing herein contained shall permit or be construed as permitting:

(a) An extension of the maturity of the principal of, mandatory sinking fund redemption dates, if any, or interest on any bond issued pursuant to this ordinance; or

(b) A reduction in the principal amount of any bond or the redemption premium or the rate of interest thereon; or

(c) Except as otherwise noted in Section 1 with respect to the BANs, the creation of a lien upon or a pledge of the Net Revenues of the electric utility to the bonds ranking prior to the pledge thereof created by this ordinance; or

(d) A preference or priority of any bond or bonds issued pursuant to this ordinance over any other bond or bonds issued pursuant to the provisions of this ordinance;

(e) A reduction in the Reserve Requirement; or

(f) A reduction in the aggregate principal amount of the bonds required for consent to such supplemental ordinance.

In the event that the owners of not less than sixty-six and two-thirds percent (66 2/3%) in aggregate principal amount of the bonds outstanding at the time of adoption of such supplemental ordinance shall have consented to and approved the adoption thereof by written instrument to be maintained on file in the office of the Clerk of the City, no owner of any bond issued pursuant to this ordinance shall have any right to object to the adoption of such supplemental ordinance or to object to any of the terms and provisions contained therein or the operation thereof, or in any manner to question the propriety of the adoption thereof, or to enjoin or restrain the Common Council of the City from adopting the same, or from taking any action pursuant to the provisions thereof. Upon the adoption of any supplemental ordinance pursuant to the provisions of this section, this ordinance shall be, and shall be deemed, modified and amended in accordance therewith, and the respective rights, duties and obligations under this ordinance of the City and all owners of bonds then outstanding, shall thereafter be determined,

exercised and enforced in accordance with this ordinance, subject in all respects to such modifications and amendments. Notwithstanding anything contained in the foregoing provisions of this ordinance, the rights and obligations of the City and of the owners of the bonds authorized by this ordinance, and the terms and provisions of the bonds and this ordinance, or any supplemental or amendatory ordinance, may be modified or altered in any respect with the consent of the City and the consent of the owners of all the bonds then outstanding.

Section 23. Issuance of BANs. (a) The City, having satisfied all the statutory requirements for the issuance of its bonds, may elect to issue its BAN or BANs to a financial institution, the Indiana Bond Bank, or any other purchaser, pursuant to a Bond Anticipation Note Purchase Agreement ("BAN Purchase Agreement") to be entered into between the City and the purchaser of the BAN or BANs. The Common Council hereby authorizes the issuance and execution of the BAN or BANs in lieu of initially issuing bonds to provide interim financing for the Project until permanent financing becomes available. It shall not be necessary for the City to repeat the procedures for the issuance of its bonds, as the procedures followed before the issuance of the BAN or BANs are for all purposes sufficient to authorize the issuance of the bonds and the use of the proceeds to repay the BAN or BANs.

(b) The Mayor and the Controller are hereby authorized to execute a BAN Purchase Agreement in such form or substance as they shall approve acting upon the advice of counsel. The Mayor, the Controller and the Clerk may also take such other actions or deliver such other certificates as are necessary or desirable in connection with the issuance of the BANs or the bonds and the other documents needed for the financing as they deem necessary or desirable in connection therewith.

Section 24. Permitted Non-Compliance with Tax Covenants. Notwithstanding any other provisions of this ordinance, the covenants and authorizations contained in this ordinance ("Tax Sections") which are designed to preserve the exclusion of interest on the BANs and bonds from gross income under federal law ("Tax Exemption") need not be complied with if the City receives an opinion of bond counsel that compliance with any Tax Section is unnecessary to preserve the Tax Exemption.

Section 25. Conflicting Ordinances. All ordinances and parts of ordinances in conflict herewith are hereby repealed.

Section 26. Headings. The headings or titles of the several sections shall be solely for convenience of reference and shall not affect the meaning, construction or effect of this ordinance.

Section 27. Effective Date. This ordinance shall be in full force and effect from and after its passage by the Common Council and execution by the Mayor.

Passed and adopted by the Common Council by the Common Council of the City of
Mishawaka, Indiana, this _____ day of _____, 2020 at _____ .m.

COMMON COUNCIL
CITY OF MISHAWAKA, INDIANA

Gregg A. Hixenbaugh, Presiding Officer

ATTEST:

Deborah S. Block, IAMC, MMC, City Clerk

Presented by me to the Mayor of the City of Mishawaka, Indiana, on the _____ day of
_____, 2020 at _____ .m.

Deborah S. Block, IAMC, MMC, City Clerk

This ordinance approved and signed by me, the Mayor of the City of Mishawaka,
Indiana, on the _____ day of _____, 2020 at _____ .m.

David A. Wood, Mayor

Exhibit A

Description of Project

- Upgrade substation and distribution network project. The project will affect seven of the cities eleven substations, all the distribution lines and transformers South of McKinley ave., and eventually eliminate one substation.

The current distribution system is a mix of 12000 volts (primarily north of McKinley) and 4160 volts (south of McKinley). The project will bring the entire system up to 12000 volts. There are several factors contributing to the need for this extensive project:

- The ability to find replacement or repair parts for the 4160-volt system.
- The power requirements of our citizens, retailers, and manufacturers has far outgrown the original design of the electric grid.
- The city's service territory and number of customers has increased beyond the efficient operational standards of an antiquated 4160-volt system.
- The age of the equipment is fast approaching or past its expected operational life span.

The new upgrades will provide safe, reliable, and efficient electricity to our current and future customers.

- Business Office relocation and contribution to New City Hall

1st Reading 11-04-20

2nd Reading 11-12-20

Passed

Failed

Continued To

RECEIVED
DEBORAH S. BLOCK, MMC

OCT 29 2020

PROPOSED ORDINANCE NO. 2020-42

ORDINANCE NO. _____

AN ORDINANCE ESTABLISHING A SCHEDULE OF RATES
AND CHARGES FOR ELECTRIC ENERGY AND SERVICES
RENDERED BY THE MISHAWAKA UTILITIES ELECTRIC
DEPARTMENT.

CITY CLERK
MISHAWAKA, IN

WHEREAS, the City of Mishawaka, Indiana, owns and operates the Mishawaka Utilities Electric Department for the purpose of distributing electric energy in said City and surrounding areas; and

WHEREAS, the existing rates and charges for services provided by the Mishawaka Utilities Electric Department were placed into effect following the Common Council's approval of Ordinance No. 5426; and

WHEREAS, the Common Council of the City of Mishawaka has found that (i) the existing electric rates and charges of the Mishawaka Utilities Electric Department produce an income in abundance of what is sufficient to maintain the Utility property in a sound physical and financial condition to render adequate and efficient service, (ii) Mishawaka Utilities Electric Department's existing rates and charges produce revenues in abundance of what is sufficient to provide for all the legal and other necessary expenses incident to operation of the Utility (including, but not limited to, operation and maintenance costs, upkeep, repairs, depreciation and taxes), to provide adequate money for working capital, to provide funds for making extensions and replacements, to provide funds for payments to the City in lieu of taxes and to provide a reasonable return upon the City's investment in plant and, therefore, such current rates and charges are not "reasonable and just charges" within the meaning of IC 8-1.5-3-8 and need to be adjusted, (iii) the proposed rates and charges attached hereto as Exhibit "A" are designed so as to be nondiscriminatory, "reasonable and just charges" for services within the meaning of IC 8-1.5-3-8, and (iv) the proposed rates and charges attached reflect therein the election of the Common Council to include in such rates and charges each of the elements of "reasonable and just charges" under IC-8-1.5-3-8, and

NOW THEREFORE, BE IT ORDAINED BY THE COMMON COUNCIL OF THE CITY OF MISHAWAKA, INDIANA, THAT:

Section 1. The rates and charges for the Mishawaka Utilities Electric Department are those set forth in Exhibit "A" attached hereto, made a part hereof and incorporated herein by reference.

Section 2. From time to time the cost of purchased power will be adjusted by Indiana Michigan Power in accordance with the rules and regulations promulgated by the Federal Energy Regulatory Commission. The Mishawaka Electric Utility's rates may be adjusted solely by the change in the cost of purchased power (the "I&M Adjustment Factor"). The I&M Adjustment Factor will be calculated in a manner reflected or closely reflected in Appendix A and, unless otherwise directed by the Common Council, shall be effective upon presentation to the Common Council for its review.

Section 3. All ordinances and parts of ordinances in conflict herewith are hereby repealed.

Section 4. This Ordinance shall be in full force and effect from and after its passage. Phase One rates shall be effective no sooner than January 1, 2021 and phase two rates shall be effective on January 1, 2022.

PASSED AND ADOPTED BY THE COMMON COUNCIL OF THE CITY OF MISHAWAKA, INDIANA, ON THIS _____ DAY OF _____, 2020.

Common Council
City of Mishawaka, Indiana

Gregg Hixenbaugh, President

ATTEST:

Deborah S. Block, IAMC, MMC, City Clerk

Presented by me, the undersigned City Clerk of the City of Mishawaka, Indiana, to the Mayor of the City of Mishawaka, Indiana, for approval on the _____ day of _____, 2020 at _____ o'clock _____.m.

Deborah S. Block, IAMC, MMC, City Clerk

Having examined the foregoing Ordinance, I do as the Mayor of the City of Mishawaka, Indiana, approve said Ordinance and return the same to the City Clerk of the City of Mishawaka, Indiana, this ____ day of _____, 2020.

Dave Wood, Mayor
City of Mishawaka, Indiana

EXHIBIT "A"

CONTENTS

RATE "R" RESIDENTIAL SERVICE

RATE "C" COMMERCIAL SERVICE

RATE "P" COMMERCIAL POWER SERVICE

RATE "I" INDUSTRIAL POWER SERVICE

RATE "MS" MUNICIPAL SERVICE

RATE "EH" ELECTRIC HEATING SERVICE

RATE "S" SCHOOL SERVICE

RATE "OL" OUTDOOR LIGHTING

RATE "SL" STREET LIGHTING SERVICE

APPENDIX A

APPENDIX B

RATE "R"

MISHAWAKA (INDIANA) ELECTRIC UTILITY

RESIDENTIAL SERVICE

To Whom Available

Available for residential service through one meter to individual residential customers including rural residential customers.

Character of Service

Alternating current, sixty-cycle, single-phase, at a standard voltage.

Rates

<u>Customer Charge:</u>	<u>Phase One</u>	<u>Phase Two</u>
Per month for each dwelling unit	\$5.91	\$5.50
<u>Energy Charge:</u>		
For the first 500 KWH used per month	0.1009	0.0938
Energy over 500 KWH used per month	0.0917	0.0853

Minimum Payment

The customer's minimum monthly payment under this rate shall be the Customer Charge plus the Energy Charge for the month.

Rate Adjustment

See Appendix A.

Non-Recurring Charges

See Appendix B.

Terms

Contracts under this rate shall be made for no less than one year and shall be self-renewing for successive periods of one year each until either party shall give at least 48 hours' notice to the other of their intention to discontinue service at the end of any earlier period. The Utility reserves the right to require contracts for periods in excess of one year.

Special Terms and Conditions

This rate is available for single-phase service only. Where three-phase service is required and/or where motors or heating equipment are used for commercial or industrial purposes, the applicable power rate will apply to such service.

RATE "C"

MISHAWAKA (INDIANA) ELECTRIC UTILITY

COMMERCIAL SERVICE

To Whom Available

Available to non-residential and commercial customers.

Character of Service

Alternating current, sixty-cycle, single-phase service supplied through a single set of service wires on a single meter location at a standard service voltage.

Rates

<u>Customer Charge:</u>	<u>Phase One</u>	<u>Phase Two</u>
Per month for each service location	\$5.91	\$5.50
<u>Energy Charge (per KWH):</u>	0.1234	0.1148

Minimum Payment

The minimum monthly payment for service shall be the Customer Charge plus the Energy Charge, if applicable.

Rate Adjustment

See Appendix A.

Non-Recurring Charges

See Appendix B.

Terms

Contracts under this rate shall be made for no less than one year and shall be self-renewing for successive periods of one year each until either party shall give at least 48 hours' notice to the other of their intention to discontinue service at the end of any earlier period. The Utility reserves the right to require contracts for periods in excess of one year.

Special Terms and Conditions

This rate is available for single-phase service only. Where three-phase service is required and/or where motors or heating equipment are used for commercial or industrial purposes, the applicable power rate will apply to such service.

Unmetered Usage

For customers whose service cannot reasonably be metered, the Utility shall estimate the average monthly Kwhs usage and the bill shall be based on estimated average Kwhs usage price at the current rates for Commercial Service, including Rate Adjustment.

RATE "P"

MISHAWAKA (INDIANA) ELECTRIC UTILITY

COMMERCIAL POWER SERVICE

To Whom Available

Available for all commercial and industrial customers taking service through one three-phase meter with a monthly billing demand less than 150 KW.

Character of Service

Alternative current, sixty-cycle, three-phase service supplied through a single set of service wires to a single meter location. The service voltage shall be standard secondary voltage as the Utility may, at its option, make available.

Any applicant requiring service differing from that to be supplied as herein provided shall provide proper converting, transforming, regulating, or other equipment upon his own premises at his own expense.

Rates

The rate for electrical energy supplied hereunder shall be as follows:

<u>Customer Charge:</u>	<u>Phase One</u>	<u>Phase Two</u>
Per month for each service location	\$20.75	\$19.30
<u>Demand Charge:</u>		
Per KW of billing demand for month	\$7.83	\$7.28
<u>Energy Charge (per Kwh):</u>	0.0702	0.0653

Rate Adjustment

See Appendix A.

Non-Recurring Charges

See Appendix B.

Terms

Contracts under this rate shall be made for no less than one year and shall be self-renewing for successive periods of one year each until either party shall give at least 48 hours' notice to the other of their intention to discontinue service at the end of any earlier period. The Utility reserves the right to require contracts for periods in excess of one year.

Monthly Minimum Payment

The monthly minimum charge shall be the Customer Charge plus Demand Charge plus the Energy Charge for the month.

Measurement of Maximum Demand

Maximum demand shall be measured by suitable recording instruments provided by the Utility and in any month the maximum demand expressed in kilowatts shall be the highest registration of a 15 minute integrating demand meter or the highest registration of a thermal type demand meter.

RATE "P" (Continued)

Billing Demand

The billing demand for any month shall be the greater of (i) 5 KW or (ii) the maximum demand for the month.

Delivery Voltage

Where the Utility elects to meter the customer's service at the Utility's primary voltage, the measured maximum demand and energy will be multiplied by 0.98.

Primary Voltage Service

Where customer furnished and maintains all transformers and/or other apparatus necessary for the customer to take its entire service at the primary voltage of the Utility distribution system, a credit of \$0.44 per KW of monthly billing maximum load will be applied to each month's net bill.

RATE "I"

MISHAWAKA (INDIANA) ELECTRIC UTILITY

INDUSTRIAL POWER SERVICE

To Whom Available

Available for all industrial customers taking service through one three-phase meter with a monthly billing demand greater than 149 KW.

Character of Service

Alternative current, sixty-cycle, three-phase service supplied through a single set of service wires to a single meter location. The service voltage shall be standard secondary voltage as the Utility may, at its option, make available.

Any applicant requiring service differing from that to be supplied as herein provided shall provide proper converting, transforming, regulating, or other equipment upon his own premises at his own expense.

Rates

The rate for electrical energy supplied hereunder shall be as follows:

<u>Customer Charge:</u>	<u>Phase One</u>	<u>Phase Two</u>
Per month for each service location	\$18.27	\$16.99
<u>Demand Charge:</u>		
Per KW of billing demand for month	\$6.90	\$6.42
Per KW of billing demand for month*	6.21	5.78
<u>Energy Charge (per KwH):</u>	0.0627	0.0583

*At the Utility's option if it is determined by metering that the customer's monthly power factor is less than 85% leading or lagging.

Rate Adjustment

See Appendix A.

Non-Recurring Charges

See Appendix B.

Terms

Contracts under this rate shall be made for no less than one year and shall be self-renewing for successive periods of one year each until either party shall give at least 48 hours' notice to the other of their intention to discontinue service at the end of any earlier period. The Utility reserves the right to require contracts for periods in excess of one year.

Monthly Minimum Payment

The monthly minimum charge shall be the Customer Charge plus Demand Charge plus the Energy Charge for the month.

RATE "I" (Continued)

Measurement of Maximum Demand

Maximum demand shall be measured by suitable recording instruments provided by the Utility and in any month the maximum demand expressed in kilowatts shall be the highest registration of a 15 minute integrating demand meter or the highest registration of a thermal type demand meter.

Billing Demand

The billing demand for any month shall be the greater of (i) 5 KW or (ii) the maximum demand for the month.

Delivery Voltage

Where the Utility elects to meter the customer's service at the Utility's primary voltage, the measured maximum demand and energy will be multiplied by 0.98.

Primary Voltage Service

Where customer furnished and maintains all transformers and/or other apparatus necessary for the customer to take its entire service at the primary voltage of the Utility distribution system, a credit of \$0.39 per KW of monthly billing maximum load will be applied to each month's net bill.

RATE "MS"

MISHAWAKA (INDIANA) ELECTRIC UTILITY

MUNICIPAL SERVICE

To Whom Available

Available to the City of Mishawaka for the supply of electrical energy to public buildings or locations which are supported by public tax levies or municipally-owned Utility rates.

Character of Service

Electric energy supplied hereunder shall be alternating current, sixty-cycle, at standard single-phase or poly-phase voltage.

Rates

<u>Customer Charge:</u>	<u>Phase One</u>	<u>Phase Two</u>
Per month for each service location	\$20.75	\$19.30
<u>Energy Charge (per KWH):</u>	0.1202	0.1118

Rate Adjustment

See Appendix A.

Non-Recurring Charges

See Appendix B.

RATE "EH"

MISHAWAKA (INDIANA) ELECTRIC UTILITY

ELECTRIC HEATING SERVICE

To Whom Available

This tariff is available to existing customers only who were taking service under tariff EHND prior to December 12, 1984.

Character of Service

Alternating current, sixty-cycle, supplied through a single set of service wires to a single meter location at a standard service voltage.

Rates

<u>Customer Charge:</u>	<u>Phase One</u>	<u>Phase Two</u>
Per month for each service location	\$20.75	\$19.30
<u>Energy Charge (per Kwh):</u>	0.2202	0.2048

Rate Adjustment

See Appendix A.

Non-Recurring Charges

See Appendix B.

RATE "S"

MISHAWAKA (INDIANA) ELECTRIC UTILITY

SCHOOL SERVICE

To Whom Available

Available to public and private not-for-profit entities providing educational instruction serving students pre-kindergarten through twelfth grade for facilities that house classrooms.

Character of Service

Electric energy supplied shall be alternating currents sixty-cycle and a single-phase or polyphase voltage.

Rates

The rate for electrical energy supplied hereunder shall be as follows:

<u>Customer Charge:</u>	<u>Phase One</u>	<u>Phase Two</u>
Per month for each service location	\$5.91	\$5.50
<u>Energy Charge (per KwH):</u>	0.1099	0.1022

Rate Adjustment

See Appendix A.

Non-Recurring Charges

See Appendix B.

Terms

Contracts under this rate shall be made for no less than one year and shall be self-renewing for successive periods of one year each until either party shall give at least 48 hours' notice to the other of their intention to discontinue service at the end of any earlier period. The Utility reserves the right to require contracts for periods in excess of one year.

Minimum Payment

The minimum payment for service shall be the Customer Charge plus the Energy Charge.

RATE "OL"

MISHAWAKA (INDIANA) ELECTRIC UTILITY

RATE FOR OUTDOOR PROTECTION LIGHTING

To Whom Available

Available for outdoor lighting customers within the service area of the Utility.

The utility has begun the process of converting the HPS bulbs to light emitting diode (LED) fixtures. The utility will continue this process replacing the HPS bulbs to make all lighting in the city LED. All existing 100, 250 and 400 watt high pressure sodium and 175 watt mercury lighting will be replaced at the end of life or at the request of the customer at no additional charge.

Rates Per Month

- (a) Where the lighting fixture can be installed on an existing distribution-type wood pole or other supporting device and served from existing secondary facilities, with no more than one span of secondary, the rate shall be:

<u>Customer Charge:</u>	<u>Phase</u>	<u>Phase</u>
	<u>One</u>	<u>Two</u>
Single 48 watt LED lamp	\$6.80	\$6.32
Single 110 watt LED lamp	9.21	8.56

- (b) Where additional poles and spans of overhead secondary are required to provide outdoor lighting service, the following additional charges shall apply:

<u>Customer Charge:</u>	<u>Phase</u>	<u>Phase</u>
	<u>One</u>	<u>Two</u>
Each additional pole	\$0.78	\$0.73
Each additional span of secondary	0.52	0.48

- (c) Where a customer requests outdoor lighting service requiring special poles or fixtures, or the use of an underground distribution system instead of an overhead distribution system, the customer's rates will be increased according to the Company's cost to install, operate, and maintain such special facilities, or the customer may be required to make a payment to cover the investment made as a result of these special installations.

<u>Customer Charge:</u>	<u>Phase</u>	<u>Phase</u>
	<u>One</u>	<u>Two</u>
Single 80 watt LED decorative light	\$9.21	\$8.56
Single D4A LED decorative retrofit	9.21	8.56

Terms

Contracts under this tariff will be for not less than one year for residential customers and three years for commercial or industrial customers.

Hours of Lighting

All rates assume that lamps will burn approximately 4,000 hours per year.

RATE "SL"

MISHAWAKA (INDIANA) ELECTRIC UTILITY

MUNICIPAL STREET LIGHTING SERVICE

To Whom Available

Available to the City of Mishawaka and other governmental agencies for street lighting service.

The utility has begun the process of converting the HPS bulbs to light emitting diode (LED) fixtures. The utility will continue this process replacing the HPS bulbs to make all lighting in the city LED. All existing 100, 250, and 400 watt high pressure sodium and 175 watt mercury lighting will be replaced at the end of life or at the request of the customer at no additional charge.

Character of Service

The Utility shall install, operate, and maintain, at its expense, all street lighting equipment and appurtenances.

Rates

The rates for street lighting per lamp per month shall be as follows:

<u>Lamp Size</u>	<u>Lamp Type</u>	<u>Phase One</u>	<u>Phase Two</u>
D4A	LED Retro	\$9.21	\$8.56
73 watt	LED	6.98	6.49
80 watt	LED	9.21	8.56
110 watt	LED	9.21	8.56
150 watt	Sodium	6.98	6.49
175 watt	Mercury Vapor	6.98	6.49
250 watt	Sodium	9.21	8.56

Hours of Lighting

All rates assume that lamps will burn approximately 4,000 hours per year.

APPENDIX A

RATE ADJUSTMENT

The Rate Adjustment shall be on the basis of an I&M Adjustment Factor, occasioned solely by changes in the cost of purchased power applicable to Rates R, C, P, I, MS, FH, and S.

Rate Adjustment applicable to the above-listed Rate Schedules:

\$0.000000 per KWH used per month as computed following the method, or a method closely approximating the method, illustrated below.

Annual Cost of Purchased Power at the new wholesale rates and charges	\$0	
Annual Cost of Purchased Power priced at rates and charges effective _____	0	
Annual Change in Purchased Power Cost	0	
Annual KWH Sales	0	KWH
Annual Increase per KWH Sold	0	
Adjusted for Utility Receipts Tax	0.93	
I&M Adjustment Factor	<u>\$0.000000</u>	/KWH

APPENDIX B
NON-RECURRING CHARGES

A. Electric Account Service Charge: \$20.00 one-time charge (not refundable)

B. New Account OPL Service Charge: \$10.00 one-time charge (not refundable)

C. Service Deposit: Service deposits are set by the Utility and can be up to One-sixth (1/6) of normal annual bills per service location

D. Failure to Meet Appointment Scheduled Charge: \$15.00

E. Dishonored Negotiable Instrument Charge: \$20.00

F. Processing/Disconnect Charge:

Single Phase

—Disconnect During Office Hours—\$25.00

—Additional Reconnect charges after hours—\$70.00

—Additional Reconnect charges on Sundays & Holidays — \$90.00

Three-Phase

—Disconnect During Office Hours—\$ 100.00

—Additional Reconnect after hours—\$ 225.00

—Additional Reconnect on Sundays & Holidays—\$ 275.00

G. Processing/Disconnect Charge, when Disconnect is required at pole, in vault, manhole or service box:

—Disconnect During Office Hours—\$ 100.00

—Additional Reconnect after hours—\$ 225.00

—Additional Reconnect on Sundays & Holidays—\$ 275.00

H. Meter Test Charge: Free every two years if required

1. Single Phase—\$ 20.00* if more frequent than every 2 years

2. Three-Phase—\$ 40.00* if more frequent than every 2 years

*Fee is refunded if meter is off more than two percent (2%)

I. Service Call ("no power" call when the Customer is at fault): Same as Processing/Disconnect Charge (F, above)

J. Late Payment Penalty: 10% on the first \$3.00; 3% on the balance for Electric & OPL

APPENDIX B
NON-RECURRING CHARGES

K. Meter Tampering Charge:

1. First Offense—Actual cost of parts, labor, equipment and overhead plus cost of service estimated to have been used, based on prior history \$75.00 + damage and a police report should be filed with the police.
2. Second Offense Same as above, plus 100.00 + damage
3. Subsequent Offenses— Same as above, plus disconnection

L. Credit Agreement Fee: 10% of arrears amount or \$10, whichever is greater (added to payment agreement)

M. Temporary Service Charge:

- ☐ Residential Service (if meter immediately adjacent to Delivery Point): \$ 50.00

In Addition:

- ☐ single span up to 125 feet \$100.00
☐ each additional Span up to 125 feet \$150.00
☐ Commercial Service: \$100.00

In Addition:

- ☐ Cost of labor for hookup and removal
☐ Cost of vehicles for hookup and removal
☐ Cost of engineering (two hour minimum)
☐ Cost of additional transformers (per 30 days, or any part thereof) \$10.00 each

N. Energy Recording Device: \$20.00 installation charge (not refundable) at customers request. No charge if found to be utility problem.

State of Indiana St. Joseph County

Personally Appeared Before Me The Undersigned:

Nancy Nich

Legal Clerk of the **MISHAWAKA ENTERPRISE**, a public newspaper of general circulation, published in the city of Mishawaka in the County aforesaid, who being duly sworn, upon her oath saith, that the notice of which she attached is the true copy, was duly published in the **Mishawaka Enterprise** for:

XX One TWO THREE

times successively to-wit:

On the 26th day of November, 2020, and

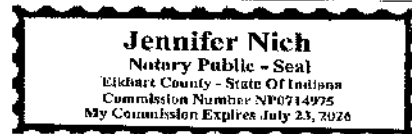
On the day of , 2020, and

On the day of , 2020

[Signature]

Subscribed & Sworn To Before Me
This 26th day of November, 2020

Jennifer Nich



CHARGES: \$ 117.22

**NOTICE OF A HEARING ON
PROPOSED RATES AND CHARGES**

Property owners, rate payers, and other interested parties in or served or to be served by the Mishawaka Electric Utility are hereby notified that Proposed Ordinance No. 2020-42 establishing electric rates and charges for services to be rendered by the utility was introduced at a meeting of the Common Council of the City of Mishawaka, Indiana held on November 4, 2020. At a meeting of the Council to be held at 7:00 p.m. (local time) on December 7, 2020, at the Council's meeting room there will be a public hearing on the matter of rates and charges, and consideration of adoption of said Ordinance.

SCHEDULE OF RATES AND CHARGES

Rates shall be adopted in two phases. Phase One and Phase Two effective January 1, 2021 and January 1, 2022, respectively, in the amounts as follows:

Phase One (Effective January 1, 2021):

<u>User Class</u>	<u>Customer Charge</u>	<u>Energy Charge</u>	<u>Demand Charge</u>	<u>Rate Adjustment</u>
<u>Residential – Rate R</u>	\$5.91			
1st 500 KWH		10.09¢		Appendix A
Over 500 KWH		9.17¢		Appendix A
<u>Commercial – Rate C</u>	\$5.91	12.34¢		Appendix A
<u>Commercial Power – Rate P</u>	\$20.75	7.02¢	\$7.83	Appendix A
Primary voltage credit 44¢ per KW				
<u>Commercial Power – Rate I</u>	\$18.27	6.27¢		
Billing demand, or			\$6.90	Appendix A
Per KVA			\$6.21	Appendix A
Primary voltage credit 39¢ per KW				
<u>Municipal – Rate MS</u>	\$20.75	12.02¢		Appendix A
<u>Electric Heat – Rate EH</u>	\$20.75	22.02¢		Appendix A
<u>School – Rate S</u>	\$5.91	10.99¢		Appendix A
<u>Outdoor Lighting – Rate OL</u>				
Single 48-watt LED lamp	\$6.80			
Single 80-watt LED decorative light	9.21			
Single 110-watt LED lamp	9.21			
Additional pole	\$0.78			
Additional span of secondary	0.52			

Street Lighting – Rate SL

<u>Lamp Size</u>	<u>Lamp Type</u>	<u>Rate Charged per Lamp</u>
D4A	LED Retro	\$9.21
73 watt	LED	6.98
80 watt	LED	9.21
110 watt	LED	9.21
150 watt	Sodium	6.98
175 watt	Mercury Vapor	6.98
250 watt	Sodium	9.21

Phase Two (Effective January 1, 2022):

<u>User Class</u>	<u>Customer Charge</u>	<u>Energy Charge</u>	<u>Demand Charge</u>	<u>Rate Adjustment</u>
<u>Residential – Rate R</u>	\$5.50			
1st 500 KWH		9.38¢		Appendix A
Over 500 KWH		8.53¢		Appendix A
<u>Commercial – Rate C</u>	\$5.50	11.48¢		Appendix A
<u>Commercial Power – Rate P</u>	\$19.30	6.53¢	\$7.28	Appendix A
Primary voltage credit 44¢ per KW				
<u>Commercial Power – Rate I</u>	\$16.99	5.83¢		
Billing demand, or			\$6.42	Appendix A
Per KVA			5.78	Appendix A
Primary voltage credit 39¢ per KW				
<u>Municipal – Rate MS</u>	\$19.30	11.18¢		Appendix A
<u>Electric Heat – Rate EH</u>	\$19.30	20.48¢		Appendix A
<u>School – Rate S</u>	\$5.50	10.22¢		Appendix A
<u>Outdoor Lighting – Rate OL</u>				
Single 48-watt LED lamp	\$6.32			
Single 80-watt LED decorative light	8.56			
Single 110-watt LED lamp	8.56			
Additional pole	\$0.73			
Additional span of secondary	0.48			

Street Lighting – Rate SL

<u>Lamp Size</u>	<u>Lamp Type</u>	<u>Rate Charged per Lamp</u>
D4A	LED Retro	\$8.56
73 watt	LED	6.49
80 watt	LED	8.56
110 watt	LED	8.56
150 watt	Sodium	6.49
175 watt	Mercury Vapor	6.49
250 watt	Sodium	8.56

At such hearing and prior to final adoption of said Ordinance, all interested parties may appear and be heard. A copy of Proposed Ordinance No. 2020-42 may be examined at the office of the City Clerk.
Dated this 18th day of November, 2020

Deborah S. Block, IAMC, MMC,
City Clerk